KA
174
.P87
R42
v.33

UNITED STATES OF AMERICA

U.S.

Federal Power Commission Reports

Opinions, Decisions, and Orders

Volume 33

JANUARY 1, 1965–JUNE 30, 1965

Reported by the Commission

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1967

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402
Price $5

FEDERAL POWER COMMISSION

COMMISSIONERS*

LEE C. WHITE, *Chairman*

JOHN A. CARVER, JR., *Vice Chairman*

LAWRENCE J. O'CONNOR, JR.

CHARLES R. ROSS

CARL E. BAGGE [1]

GORDON M. GRANT, *Secretary*

---

*The Commissioners in this period of 1965 were Joseph C. Swidler, Lawrence J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

[1] Assumed office on May 27, 1965, *vice* Commissioner Woodward.

CONTENTS

Page
Members of the Commission II
Table of Commission Opinions, Initial Decisions Which Have Become Final, and General Rule Making Orders IV
Table of Cases Reported VII
Table of Cases Cited XXIX
Table of Statutes Cited XXXVII
Table of Rules of Commission Cited XLI
Table of Miscellaneous Citations XLV
Foreword XLVII
Opinions, Decisions, and Orders 1
List of Producer Orders 1313
Index-Digest 1355
Subject Index 1371

This volume should be cited "33 FPC———".

COMMISSION OPINIONS

Opinion No.		Page
447	Area Rate Proceeding, et al. (Permian Basin Area), docket No. AR61-1, et al	43
448	Hope Natural Gas Co., docket No. CP63-272	150
449	Transcontinental Gas Pipe Line Corp., docket No. CP63-222	237
449-A	Transcontinental Gas Pipe Line Corp., docket No. CP63-222	818
450	Colorado Interstate Gas Co., et al., docket No. CP64-294, et al	281
451	Southwestern Public Service Co., docket No. E-7038	343
452	Consolidated Edison Co. of New York, Inc., project No. 2338	428
452-A	Consolidated Edison Co. of New York, Inc., project No. 2338	965
453	Northern Natural Gas Co., docket No. CP64-228	501
454	Georgia Power Co., project No. 2413	934
455	Natural Gas Pipeline Co. of America, docket No. CP63-174	545
456	Natural Gas Pipeline Co. of America, docket No. RP61-8	574
456-A	Natural Gas Pipeline Co. of America, docket No. RP61-8	1277
457	Southern California Edison Co., et al., docket No. E-7165	687
458	Indiana & Michigan Electric Co., docket No. E-7089	739
458-A	Indiana & Michigan Electric Co., docket No. E-7089	1252
459	South Carolina Electric & Gas Co., docket No. E-7146	984
460	Southern Natural Gas Co. v. United Gas Pipe Line Co., docket No. RP63-7	1077
461	Alabama Power Co., project No. 2146	1105
462	Western Light & Telephone Co., Inc., docket No. E-7187	1147
463	Northern Natural Gas Co., docket No. CP64-255 (Phase II)	1163
464	Texaco Inc., et al., docket No. G-8087, et al	1228

INITIAL DECISIONS WHICH HAVE BECOME FINAL

Featherstone, Martha, et al., docket No. CI64-591, et al	621
Michigan Consolidated Gas Co., et al., docket No. CP65-38, et al	912
Wetmore, Kansas, City of, docket No. CP64-177	851

GENERAL RULE MAKING ORDERS

Order No.		
292	Docket No. R-269, Application for License—Recreation Plan	32
293	Docket No. R-263, Expenditures for Political Purposes	40
294	Docket No. R-270, Public Utilities and Licensees—Transmission Line Statistics	569

Page

294-A Docket No. R-270, Public Utilities and Licensees—Transmission Line Statistics 701

295 Docket No. R-271, Applications for Abandonment by Natural Gas Pipeline Companies 614

296 Docket No. R-273, Anti-Triggering Conditions in Certificates (Tenth Amendment to Statement of General Policy No. 61-1) 682

297 Docket No. R-274, Independent Producers; Certificate and Abandonment Applications 958

298 Docket No. R-275, Pipeline Budget Applications—Direct Sales 1075

299 Docket No. R-255, Publicizing License Conditions Relating to Recreational Opportunities 1131

300 Docket No. R-243, Main Line Direct Industrial Sales 1286

--- Docket No. R-249, Joint Use of Water Power Project Works, Order Terminating 711

TABLE OF CASES REPORTED

Page
Abell, George T., et al., docket No. CI65–878, et al. 1260
Alabama Electric Cooperative, Inc., et al., docket No. E–7183 183, 586, 1134, 1135
Alabama Power Co., et al., docket No. E–7183 183, 586, 1134, 1135
*Alabama Power Co., project No. 2146 961, 1105
Alabama Power Co., project No. 2407 71
Alabama Power Co., et al., project No. 2408 670
Alabama-Tennessee Natural Gas Co., docket No. CP64–190 1
Alabama-Tennessee Natural Gas Co., docket No. CP65–197 905
Algonquin Gas Transmission Co., docket No. CP64–6 642
Algonquin Gas Transmission Co., docket No. CP65–63 86
Algonquin Gas Transmission Co., et al., docket No. CP65–217 989
Alpena Power Co., project No. 2419 403
*Amax Petroleum Corp. (formerly Blackwell Zinc Co., Inc.), et al., docket No. CI61–1659, et al. 1228
*Ambassador Oil Corp., et al., docket No. CI61–253, et al. 1228
*A'Mell Oil Properties (Operator), et al., docket No. CI63–1160, et al. 1228
Amerada Petroleum Corp., et al., docket No. G–16117, et al. 885
*Amerada Petroleum Corp., et al., docket No. CI60–704, et al. 1228
Amerada Petroleum Corp., et al., docket No. CI62–1544, et al. 643, 1124
Amerada Petroleum Corp., et al., docket No. RI65–552, et al. 1274
American Electric Power Co., Inc., et al., docket No. E–7184 406, 654
American Louisiana Pipe Line Co., docket No. CP64–154 735
American Louisiana Pipe Line Co., et al., docket No. CP65–190, et al. 655
American Louisiana Pipe Line Co., docket No. CP65–276 861
American Louisiana Pipe Line Co., et al., docket No. CP65–382 1298
American Louisiana Pipe Line Co., et al., docket No. RP65–23, et al. 830

---

*Designates case as an opinion or decision.

Page
American Louisiana Pipe Line Co., et al., docket No. RP65-28, et al. 19
American Smelting and Refining Co., et al., docket No. G-228. 640
*Anadarko Production Co., et al., docket No. G-19337, et al. 1228
*Anderson Petroleum, et al., docket No. CI60-456, et al. 1228
*An-Son Corp., et al., docket No. G-19542, et al. 1228
Anti-Triggering Conditions in Certificates, docket No. R-273. 1190
*Apache Corp., et al., docket No. G-18933, et al. 1228
Area Rate Proceeding, docket No. AR61-1, Statement of Commissioner Black 14
*Area Rate Proceeding, et al. (Permian Basin Area), docket No. AR61-1, et al. 43, 198, 204
Area Rate Proceeding, et al. (Southern Louisiana Area), docket No. AR61-2, et al. 1045
Area Rate Proceeding, et al. (Hugoton-Anadarko Area), docket No. AR64-1, et al. 99, 101, 299, 723
Area Rate Proceeding, et al. (Texas Gulf Coast Area), docket No. AR64-2, et al. 99, 101, 299
Argo, M. M., docket No. RI65-221 799
Arkansas Louisiana Gas Co., et al., docket No. CP61-163, et al. 1065
Arkansas Louisiana Gas Co., docket No. CP65-132 56
Arkansas Louisiana Gas Co., docket No. CP65-133 58
Arkansas Louisiana Gas Co., docket No. CP65-206 1045
Arkansas Louisiana Gas Co., docket No. CP65-209 540
Arkansas Louisiana Gas Co., docket No. CP65-234 889
Arkansas Louisiana Gas Co., docket No. CP65-256 863
Arlington, Kentucky, City of, docket No. CP65-271 840
*Ashland Oil & Refining Co., et al., docket No. G-13929, et al. 1228
Atlantic Refining Co., The, docket No. G-9283, et al. 23, 305
Atlantic Refining Co., The, docket No. G-17741 326
*Atlantic Refining Co., The, et al., docket No. G-18288, et al. 1228
Atlantic Refining Co., The, et al., docket No. G-18565, et al. 885
*Atlantic Refining Co., The, et al., docket No. CI63-576, et al. 621, 1000
Atlantic Refining Co., The, et al., docket No. CI64-1130, et al. 1260
Atlantic Seaboard Corp., et al., docket No. G-16401, et al. 113, 619
Atlantic Seaboard Corp., et al., docket No. G-20272, et al. 123
Atlantic Seaboard Corp., docket No. RP65-40 306
Atlantic Seaboard Corp., et al., docket No. RP65-40, et al. 713
Austell, Georgia, City of, et al., docket No. CP65-74, et al. 729
Baca Gas Gathering System, Inc., docket No. CP65-57 102, 1299
Bainbridge, Georgia, City of, docket No. CP65-156 185
Bangor Hydro-Electric Co., project No. 2403 278
*Barby, Otto C., et al., docket No. CI62-451, et al. 1228

Page
*Berry, Thomas E., et al., docket No. G–16971, et al 1228
*Big Chief Drilling Co., et al., docket No. G–18111, et al 1228
Bismarck, Missouri, City of, docket No. CP65–254 841
Blackstone Gas Co., docket No. CP65–23 80
Blandin Power Co., project No. 2361 332
Blue Dolphin Pipe Line Co., docket No. CP65–323 1141
Bluebonnet Gas Corp., docket No. CP65–326 1032
Border Pipe Line Co., et al., docket No. G–228 640
*Bradley, Edwin G., et al., docket No. G–12833, et al 1228
*Bradley Producing Corp., The (Operator), et al., docket No. G–19480, et al 1228
*Bradley Producing Corp., The, et al., docket No. G–20148, et al 1228
Brown Co., docket No. E–7212 843
Brown Co., et al., project No. 2300, et al 845
*Brown, Herman, Estate, et al., docket No. CI61–403, et al 1228
Brown-New Hampshire, Inc., et al., project No. 2300, et al 845
Buford, Georgia, City of, et al., docket No. CP65–11, et al 729
*Cabot Corp. (SW), et al., docket No. G–20250, et al 1228
*Cabot Corp., et al., docket No. CI61–540, et al 1228
*Cal-Ray Petroleum Corp., et al., docket No. CI60–614, et al 1228
Carolina Pipeline Co., et al., docket No. RP63–4 308
Carolina Power & Light Co., et al., docket No. E–7192 231
*Carter-Jones Drilling Co., Inc., et al., docket No. G–14980, et al 1228
Central Illinois Electric and Gas Co., docket No. CP65–257 716
Central Illinois Public Service Co., docket No. CP65–299 1191
Central Illinois Public Service Co., docket No. CP65–300 1033
Central Illinois Public Service Co., docket No. CP65–301 1257
Central Maine Power Co., docket No. E–7215 1157
Central Natural Gas Co., docket No. CP65–134 327
*Champlin Petroleum Co., et al., docket No. G–11150, et al 1228
Chippewa and Flambeau Improvement Co., issued February 8, 1965 186
*Cimarron Transmission Co., et al., docket No. CP63–317, et al 1228
Cincinnati Gas & Electric Co., The, et al., docket No. E–7125, et al 109
Cities Service Gas Co., docket No. G–2214 675
Cities Service Gas Co., docket No. G–18799, et al 233
Cities Service Gas Co., et al., docket No. CP64–89 724
Cities Service Gas Co., docket No. CP65–137 60
Cities Service Gas Co., et al., docket No. CP65–150, et al 120, 1189
Cities Service Gas Co., docket No. CP65–152 62

Page
Cities Service Gas Co., docket No. CP65–162 198
Cities Service Gas Co., docket No. CP65–166 588, 1064
Cities Service Gas Co., docket No. CP65–216 310
Cities Service Gas Co., docket No. CP65–334 1220
Cities Service Gas Co., et al., docket No. RP64–9, et al 1292
Cities Service Gas Co., et al., docket No. RP65–21, et al 830
Cities Service Oil Co., et al., docket No. RI63–485, et al 1212
Citizens Utilities Co., docket No. E–7186 47
Clegg & Hunt (Operator), et al., docket No. RI60–405 808
Coastal States Gas Producing Co., et al., docket No. RI65–89 315
Colorado Interstate Gas Co., docket No. G–9666 173
Colorado Interstate Gas Co., et al., docket No. CP61–143, et al 1065
*Colorado Interstate Gas Co., et al., docket No. CP63–316, et al 1228
Colorado Interstate Gas Co., docket No. CP64–182 736
*Colorado Interstate Gas Co., et al., docket No. CP64–294, et al 281
Colorado Interstate Gas Co., et al., docket No. CP65–40, et al 1142
Colorado Interstate Gas Co., et al., docket No. CP65–144, et al 519
Colorado Interstate Gas Co., docket No. CP65–145 573
Colorado Interstate Gas Co., docket No. CP65–146 63
Colorado Interstate Gas Co., et al., docket No. CP65–200, et al 608
Colorado Interstate Gas Co., docket No. CP65–292 995
Colorado Interstate Gas Co., et al., docket No. RP65–19, et al 830
Colorado Interstate Gas Co., et al., docket No. RP65–43 719
*Colorado Oil & Gas Corp. (Operator), et al., docket No. G–13086, et al 1228
*Colorado Oil & Gas Corp., et al., docket No. CI60–781, et al 1228
Colton, California, City of, et al., docket No. E–6821, et al 174
Columbia Gulf Transmission Co., docket No. CP65–126 16
Columbia Gulf Transmission Co., docket No. CP65–203 591
Columbia River Basin, Headwater Benefits Determination, docket No. E–6384 300, 907
Columbia River Basin, Headwater Benefits Investigation, docket No. E–6384 1290
Columbian Carbon Co., docket No. G–11751, et al 1272
*Columbian Fuel Corp., et al., docket No. CI60–169, et al 1228
Columbian Fuel Corp., issued March 25, 1965 620
Commissioners of St. Michaels, Maryland, et al., docket No. E–7114, et al 172, 564
Community Natural Gas Co., Inc., docket No. CP65–62 116
Community Public Service Co., docket No. E–7209 718

Page

Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, et al., project No. 2285, et al. 737
*Consolidated Edison Co. of New York, Inc., project No. 2338. 428, 714, 891, 964, 965, 1014
Consolidated Gas Supply Corp., docket No. CP65-262 1047
Consolidated Gas Supply Corp., et al., docket No. CP65-268. 997
Consolidated Gas Supply Corp., docket No. CP65-277 1030
Consolidated Gas Supply Corp., et al., docket No. CP65-296. 1192
Consolidated Oil & Gas, Inc., docket No. RI61-350 542
Consumers Power Co., et al., docket No. E-7206, et al. 177
*Continental Oil Co., et al., docket No. CI60-634, et al. 1228
Coos-Curry Electric Cooperative, Inc., project No. 2319 644
*Cox, Edwin L., et al., docket No. G-17222, et al. 1228
*Crestmont Oil Co. (Operator), et al., docket No. G-19420, et al. 1228
Crystal Gas Co., docket No. CP65-194 998
Cumberland and Allegheny Gas Co., et al., docket No. CP64-244 598, 1161
Cushing Gas Transmission Co., docket No. CP65-328 1194
Dahlgren, Illinois, Village of, docket No. CP65-250 846
Dalco Oil Co., et al., docket No. CI64-1442, et al. 1260
Dayton Power and Light Co., docket No. E-7200 208
Delaware Power & Light Co., et al., docket No. E-7137, et al. 172, 564
*Desert Electric Cooperative, Inc., et al., docket No. E-7165. 687
Detroit Edison Co., The, et al., docket No. E-7206, et al. 177
Dorchester Gas Producing Co., docket No. G-18671 1265
Dorchester Gas Producing Co., docket No. RI64-749, et al. 88
Dover, Delaware, City of, et al., docket No. E-7175, et al. 172, 564
Duke Power Co., et al., docket No. E-7192 231
Dunlap, Tennessee, City of, docket No. CP65-212 971
Duquesne Light Co., docket No. E-6939 1125
*Eason Oil Co., et al., docket No. CI60-772, et al. 1228
*Eason, T. W., et al., docket No. CI60-805, et al. 1228
East Tennessee Natural Gas Co., et al., docket No. CP65-66, et al. 729
Eastern Maine Electric Cooperative, Inc., docket No. E-6475. 1066
Eastern Shore Natural Gas Co., docket No. CP65-64 187
Eastern Shore Natural Gas Co., et al., docket No. CP65-193, et al. 823
Eastern Shore Natural Gas Co., docket No. CP65-223 737
Eastern Shore Public Service Co. of Maryland, The, et al., docket No. E-7114, et al. 172, 564
Eastern Shore Public Service Co. of Virginia, The, et al., docket No. E-7137, et al. 172, 564
Eclectic, Alabama, Town of, docket No. CP65-278 1259

Page

Eckert, Willard, d/b/a Eckert Gas Co., et al., docket No. CP65-231, et al. 809
El Paso Electric Co., docket No. E-7216, et al. 973
El Paso Gas Supply Co., et al., docket No. CP60-101, et al. 676
El Paso Natural Gas Co., docket No. G-17849, et al. 89
El Paso Natural Gas Co., et al., docket No. CP61-26, et al. 676
El Paso Natural Gas Co., docket No. CP61-92 1159
El Paso Natural Gas Co., et al., docket No. CP61-92, et al. 34
El Paso Natural Gas Co., et al., docket No. CP61-265, et al. 36
El Paso Natural Gas Co., docket No. CP63-296 592
El Paso Natural Gas Co., docket No. CP64-99 1160
El Paso Natural Gas Co., docket No. CP64-184, et al. 644
El Paso Natural Gas Co., et al., docket No. CP64-211, et al. 1260
El Paso Natural Gas Co., docket No. CP65-61 677
El Paso Natural Gas Co., docket No. CP65-113 48
El Paso Natural Gas Co., docket No. CP65-114 49
El Paso Natural Gas Co., docket No. CP65-127 65
El Paso Natural Gas Co., docket No. CP65-128 66
El Paso Natural Gas Co., et al., docket No. CP65-153, et al. 519
El Paso Natural Gas Co., docket No. CP65-178 945
El Paso Natural Gas Co., docket No. CP65-211 726
El Paso Natural Gas Co., docket No. CP65-252 949
El Paso Natural Gas Co., docket No. CP65-259 811
El Paso Natural Gas Co., docket No. CP65-281 951
El Paso Natural Gas Co., docket No. CP65-291 972, 1273
El Paso Natural Gas Co., docket No. CP65-315 1034
El Paso Natural Gas Co., docket No. CP65-339 1251
El Paso Natural Gas Co., et al., docket No. RP65-20, et al. 830
Empire District Electric Co., The, docket No. E-6711 911
Eskridge, Kansas, City of, docket No. CP65-241 1195
*F. A. Gillespie and Sons Co., et al., docket No. G-18883, et al. 1228
*Featherstone, Martha, et al., docket No. CI64-591, et al. 106, 621, 1000
Featherstone, Martha, docket No. CI65-757 636
Finch, Pruyn & Co., Incorporated, project No. 2385 321
Finder, Richard M., d/b/a Texkan Oil Co. (Operator), et al., docket No. CI61-1043, et al. 604
Florida Gas Transmission Co., et al., docket No. CP65-124 90
Florida Gas Transmission Co., docket No. CP65-165 1223
Florida Gas Transmission Co., docket No. CP65-253 864
Florida Gas Transmission Co., docket No. CP65-284 1225
Florida Gas Transmission Co., docket No. CP65-288 1227
Florida Gas Transmission Co., et al., docket No. RP65-26, et al. 19, 830

Page
Florida Power & Light Co., docket No. E–7210 328
*Foree Drilling Co., et al., docket No. G–16004, et al 1228
*Forest Oil Corp., et al., docket No. G–18239, et al 1228
Gas Gathering Corp., et al., docket No. RP65–11, et al 830
Gas Service, Inc., docket No. CP65–293 1197
Gas Transport, Inc., docket No. CP65–273 952
Gas Utility District No. 1 of Vernon Parish, Louisiana, docket No. CP65–229 1198
Gas Utility District No. 2 of Pointe Coupee Parish, Louisiana, docket No. CP65–107 678
Geo. A. Whiting Paper Co., project No. 2352 335
Georgia Power Co., docket No. E–7099, et al 188
Georgia Power Co., project No. 2341 410
Georgia Power Co., project No. 2350 337
*Georgia Power Co., project No. 2413 .... 932, 934
Gilman Paper Co., project No. 2392 1021
Glamorgan Pipe & Foundry Co., project No. 2358 396
*Global Oils, Inc. (Operator), et al., docket No. CI61–26, et al. 1228
*Global Oils, Inc., et al., docket No. CI61–868, et al 1228
*Graham-Michaelis Drilling Co., et al., docket No. G–13665, et al 1228
Grainville Gas Cooperative, et al., docket No. CP65–230, et al 809
Grand Tower, Illinois, City of, docket No. CP65–168 190
*Gulf Oil Corp., et al., docket No. G–18977, et al 1228
Gulf Oil Corp., et al., docket No. CI64–1153, et al 1260
Gulf Oil Corp., et al., docket No. RI65–599, et al 1274
Gulf States Utilities Co., docket No. E–7217 991
*Hall–Jones Ltd. (Operator), et al., docket No. CI62–1073, et al 1228
*Hamilton Brothers, Ltd., et al., docket No. CI61–1775, et al .. 1228
*Hamman, Blake (Operator), et al., docket No. CI63–1257, et al 1228
Hammermill Paper Co., project No. 2374 399
*Harper Oil Co., et al., docket No. CI60–146, et al 1228
*Harper Oil Co. (Operator), et al., docket No. CI60–590, et al. 1228
Hawkins, H. L. & H. L. Hawkins, Jr. (Operator), et al., docket No. G–18077, et al 28
*Helmerich & Payne Inc. (Operator), et al., docket No. G–15519, et al 1228
*Helmerich & Payne Inc., et al., docket No. G–20486, et al ... 1228
*Hendrick, Thomas K. (Operator), et al., docket No. CI62–281, et al 1228
*Hershey, A. L., et al., docket No. CI61–758, et al 1228
*Holleman, Wilbur J., et al., docket No. CI60–827, et al 1228

Page
Holyoke Gas & Electric Department, City of, project No. 2386 593
Holyoke Gas & Electric Department, City of, project No. 2387 610
Holyoke Gas & Electric Department, City of, project No. 2388 596
Home Gas Co., et al., docket No. G-16402, et al 113, 619
*Hope Natural Gas Co., docket No. CP63-272 150, 590
Houston Natural Gas Production Co., docket No. RI64-799, et al 31
Huber, Mrs. Anna, docket No. RI65-370 81
Humble Gas Transmission Corp., et al., docket No. RP65-12, et al 18
Humble Oil & Refining Co., et al., docket No. G-9287, et al 18, 19, 830, 1263
Humphreys, Ira Boyd and Albert E. Humphreys, project No. 375 1291
Hunt, Hassie Trust, et al., docket No. CI65-596, et al 866
Hunt Oil Co., et al., docket No. CI65-597, et al 866
Idaho Power Co., docket No. E-7194 76, 107
Idaho Power Co., project No. 1971 51, 976
Illinois Power Co., docket No. CP65-279 953
Illinois Power Co., docket No. CP65-286 1036
*Indiana & Michigan Electric Co., docket No. E-7089 38, 739, 1252
International Paper Co., project No. 2375 291
Interstate Power Co., docket No. E-7213 939, 1029
Iowa Southern Utilities Co., docket No. CP65-115 210
Iowa Southern Utilities Co., docket No. CP65-139 211
*J. E. MABEE Co., et al., docket No. G-18045, et al 1228
*J. M. Huber Corp., et al., docket No. CI61-28, et al 1228
Jersey Central Power & Light Co., et al., project No. 2309, et al 977
Jupiter Corp., The, et al., docket No. RI63-212, et al 82, 204, 213, 295, 534, 901
Kansas-Colorado Utilities, Inc., et al., docket No. CP65-55, et al 1142
Kansas-Colorado Utilities, Inc., docket No. CP65-248 812
Kansas-Colorado Utilities, Inc., docket No. CP65-263 847
Kansas-Nebraska Natural Gas Co., Inc., et al., docket No. RP65-17, et al 830
Kansas-Nebraska Natural Gas Co., Inc., et al., docket No. RP65-43 719
*Kansas-Nebraska Natural Gas Co., Inc., et al., docket No. RP65-43, et al 281

Page
Karnak, Illinois, Village of, docket No. CP65–95 225
Kaskaskia Gas Co., docket No. CP65–176 679
*Keener Oil Co., et al., docket No. G–16462, et al 1228
Kentucky Gas Transmission Corp., et al., docket No. G–16403, et al 113, 619
Kentucky Power Co., et al., docket No. E–7184, et al 406, 654
*Kerr-McGee Oil Industries, Inc., et al., docket No. G–12886, et al 1228
Kerr-McGee Oil Industries, Inc., et al., docket No. G–20479, et al 1212
*Kilroy, W. S. (Operator), et al., docket No. CI63–434, et al 621
*Kingwood Oil Co., et al., docket No. CI60–744, et al 1228
*Kirby Petroleum Co., et al., docket No. CI61–30, et al 1228
LaForce, W. Watson, et al., docket No. CI65–61, et al 1260
Lake Shore Pipe Line Co., docket No. CP65–309 1200
Lake Superior District Power Co., project No. 2390 1067
Lake Superior District Power Co., project No. 2475 848
Lands Withdrawn in Power Site Reserve No. 8 and Project No. 2273, docket No. DA–567–Idaho 800
*Lario Oil & Gas Corp., et al., docket No. G–19239, et al 1228
Lateral Gas Pipeline Co., docket No. CP65–204 645
*Leaderbrand, Ralph L., et al., docket No. CI61–1709, et al 1228
*Leonard, J. M., et al., docket No. G–19426, et al 1228
Lively, H. B. (Operator), et al., docket No. CI62–1220, et al 28
Lone Star Gas Co., docket No. CP64–268 869
Lone Star Gas Co., docket No. CP65–235 665
Lone Star Gas Co., et al., docket No. RP65–10, et al 830
Louisiana Nevada Transit Co., docket No. CP65–336 1219
Lower Valley Power and Light, Inc., project No. 2168 572
*MABEE Royalties, Inc., et al., docket No. G–18044, et al 1228
*Maguire, Russell (Operator), et al., docket No. G–19837, et al 1228
*Maguire, Russell L., et al., docket No. CI61–159, et al 1228
Maine Public Service Co., project No. 2366 3
Maine Public Service Co., project No. 2367 6
Maine Public Service Co., project No. 2368 8
Manilla, Iowa, Town of, et al., docket No. RP64–46, et al 94
Manufacturers Light and Heat Co., The, et al., docket No. G–16404, et al 113, 619
Manufacturers Light and Heat Co., The, et al., docket No. CP64–244 598, 1161
Manufacturers Light and Heat Co., The, et al., docket No. CP65–84, et al 92
Manufacturers Light and Heat Co., The, docket No. CP65–243 1000

Page

Manufacturers Light and Heat Co., The, docket No. CP65-264 ---- 870

Marathon Oil Co., docket No. RI64-549 ---- 637

*Marshall, William Bartlett, et al., docket No. CI62-228, et al ---- 1228

*Mayflo Oil Co. (Operator), et al., docket No. CI61-538, et al ---- 1228

*Mayflo Oil Co., et al., docket No. CI62-871, et al ---- 1228

*Maynard, James G., d/b/a Maynard Oil Co., et al., docket No. CI63-1337, et al ---- 1228

McNary Project, Columbia River, Washington-Oregon, docket No. E-6383 ---- 411

Meigs, Georgia, Town of, docket No. CP65-205 ---- 721

*Meissner, Wm. H., et al., docket No. CI62-572, et al ---- 1228

Merced Irrigation District, project No. 88 ---- 1295

*Merrick, Jr., Ward S., et al., docket No. CI61-1770, et al ---- 1228

*Michigan Consolidated Gas Co., et al., docket No. CP65-38, et al ---- 94, 912

Michigan Gas and Electric Co., docket No. E-7222 ---- 954

Michigan Gas Storage Co., et al., docket No. CP65-86, et al ---- 331

Michigan Gas Storage Co., docket No. CP65-245 ---- 727

*Michigan Wisconsin Pipe Line Co., et al., docket No. CP63-314, et al ---- 1228

*Michigan Wisconsin Pipe Line Co., et al., docket No. CP65-39, et al ---- 94, 912

Michigan Wisconsin Pipe Line Co., et al., docket No. CP65-191, et al ---- 655

Michigan Wisconsin Pipe Line Co., docket No. RP65-2, et al ---- 536

Michigan Wisconsin Pipe Line Co., docket No. RP65-46 ---- 822

Midhurst Oil Corp., docket No. G-18150, et al ---- 1274

Midwest Missouri Gas Co., docket No. CP65-179 ---- 681

*Midwest Oil Corp., et al., docket No. G-19526, et al ---- 1228

Midwest Oil Corp., et al., docket No. CI64-1429, et al ---- 1260

Midwestern Gas Transmission Co., docket No. CP63-80 ---- 1162

Midwestern Gas Transmission Co., docket No. CP65-48 ---- 600

Midwestern Gas Transmission Co., et al., docket No. RP61-19, et al ---- 835

Milwaukee Gas Light Co., docket No. CP65-239 ---- 1002

Milwaukee Gas Light Co., docket No. CP65-260 ---- 1038

Milwaukee Gas Light Co., docket No. CP65-261 ---- 1201

*Mineral Ventures Corp., et al., docket No. G-16460, et al ---- 1228

Minnesota Power & Light Co., docket No. E-7219 ---- 1039

Mississippi River Fuel Corp., et al., docket No. RP65-9, et al ---- 18

Mississippi River Fuel Corp., et al., docket No. RP65-32, et al ---- 19, 830

Mississippi River Transmission Corp., docket No. CP64-265 ---- 117

Mississippi River Transmission Corp., docket No. CP65-227 ---- 956

Page
Missouri Power & Light Co., docket No. CP65–170........ 311
*Monsanto Co., et al., docket No. G–17260, et al........... 1228
Montana-Dakota Utilities Co., docket No. CP65–218....... 543
Montana-Dakota Utilities Co., docket No. CP65–251....... 871
Montana Power Co., The, project No. 5.................. 647
Montana Power Co., The, et al., project No. 2293, et al..... 737
Montana Power Co., The, project No. 2301............... 234
*Moore, Kenneth B., et al., docket No. CI60–321, et al...... 1228
Moose Creek Ranch, Inc., project No. 2353............... 1125
Morenci National Gas Co., docket No. CP65–161.......... 957
*Morrison, Graham B. and Glen W. Pryor, Trustees, et al., docket No. G–18884, et al......................... 106, 621
Mount Vernon Mills, Inc., et al., project No. 2408.......... 670
Mountain Fuel Supply Co., docket No. CP65–233.......... 825
Mountain Fuel Supply Co., docket No. CP65–348.......... 1305
*National Cooperative Refinery Association, et al., docket No. CI62–1441, et al................................ 1228
National Fuels Corp., et al., docket No. G–20426........... 1048
National Power Survey Industry Advisory Committee on Underground Transmission, Order Establishing, issued May 10, 1965.................................. 983
Natural Gas Pipeline Co. of America, docket No. G–14872... 226
Natural Gas Pipeline Co. of America, et al., docket No. CP61–149, et al................................ 1065
*Natural Gas Pipeline Co. of America, docket No. CP63–174. 545, 979
*Natural Gas Pipeline Co. of America, et al., docket No. CP63–318, et al................................ 1228
Natural Gas Pipeline Co. of America, et al., docket No. CP64–89.. 724
Natural Gas Pipeline Co. of America, docket No. CP65–184. 192
Natural Gas Pipeline Co. of America, docket No. CP65–226. 602
Natural Gas Pipeline Co. of America, docket No. CP65–238. 980
Natural Gas Pipeline Co. of America, docket No. CP65–307. 1003
Natural Gas Pipeline Co. of America, docket No. CP65–322. 1050
Natural Gas Pipeline Co. of America, docket No. CP65–335. 1203
*Natural Gas Pipeline Co. of America, docket No. RP61–8. 574, 1277
Natural Gas Pipeline Co. of America, et al., docket No. RP63–6, et al.................................. 835
Natural Gas Pipeline Co. of America, et al., docket No. RP65–7, et al.................................. 18
Natural Gas Pipeline Co. of America, et al., docket No. RP65–25, et al.............................. 19, 830
Natural Gas Pipeline Co. of America, docket No. RP65–50.. 666, 929, 1204

Page
Natural Gas Pipeline Co. of America, et al., docket No. RP65-54, et al 837
Nevada Irrigation District, project No. 338 942
Nevada Irrigation District, project No. 2266 612
Nevada Irrigation District, et al., issued February 8, 1965 194
*New Era Royalties, et al., docket No. G-19960, et al 1228
New York State Electric & Gas Corp., project No. 2438 413
Niagara Mohawk Power Corp., project No. 2318, et al 1025
Niagara Mohawk Power Corp., project No. 2330 324
*Nor-Mac-Burns Co., et al., docket No. G-15521, et al 1228
*Norris Engineering Management Corp. (Operator), et al., docket No. CI63-71, et al 1228
Northern Natural Gas Co., et al., docket No. G-17485, et al 94
Northern Natural Gas Co., et al., docket No. CP61-139, et al 34
*Northern Natural Gas Co., et al., docket No. CP63-319, et al 1228
*Northern Natural Gas Co., docket No. CP64-228 501, 1307
Northern Natural Gas Co., docket No. CP64-255 (Phase I) 126, 1271
Northen Natural Gas Co., docket No. CP64-255 (Phase I), et al 1264
*Northern Natural Gas Co., docket No. CP64-255 (Phase II) 1163
Northern Natural Gas Co., docket No. CP65-92 193
Northern Natural Gas Co., docket No. CP65-116 96
Northern Natural Gas Co., docket No. CP65-121 97
Northern Natural Gas Co., docket No. CP65-138 68
Northern Natural Gas Co., docket No. CP65-147 227
Northern Natural Gas Co., docket No. CP65-164 127
Northern Natural Gas Co., docket No. CP65-188 659
Northern Natural Gas Co., docket No. CP65-210 1071
Northern Natural Gas Co., et al., docket No. CP65-219, et al 608
Northern Natural Gas Co., docket No. CP65-220 562
Northern Natural Gas Co., docket No. CP65-221 1072
Northern Natural Gas Co., docket No. CP65-225 982
Northern Natural Gas Co., docket No. CP65-228 992
Northern Natural Gas Co., docket No. CP65-304 1005
Northern Natural Gas Co., docket No. CP65-332 1254
Northern Natural Gas Co., et al., docket No. RP65-14, et al 830
Northern Natural Gas Co., et al., docket No. RP65-30, et al 19
Northern States Power Co. (Minnesota), docket No. E-7202 942
Northern States Power Co., docket No. E-7223 1255
Northern States Power Co., project No. 2440 706
Northern Virginia Power Co., project No. 2391 340
Norwich, City of, Department of Public Utilities, project No. 2441 801, 1126
Norwich, City of, Department of Public Utilities, project No. 2508 804

Page
Oakdale Irrigation District, et al., issued March 5, 1965 416
Oakman, Alabama, Gas Board of the City of, docket No. CP65-297 1216
*Obering, E. A., Operator, et al., docket No. G-19616, et al 1228
Ohio Fuel Gas Co., The, docket No. CP64-233 1205
Ohio Fuel Gas Co., The, docket No. CP65-24 104
Ohio Fuel Gas Co., The, docket No. CP65-247 993
Ohio Fuel Gas Co., The, et al., docket No. RP65-29, et al 19, 830
Ohio Fuel Gas Co., The, docket No. RP65-51 1027
*Oil and Gas Ventures, Inc., et al., docket No. CI61-805, et al 1228
*Oklahoma Natural Gas Co., et al., docket No. G-13204, et al 1228
*Oklahoma Natural Gas Co. (formerly State Fuel Supply Co.), et al., docket No. G-16853, et al 1228
Oklahoma Natural Gas Co., et al., docket No. CP65-317, et al 1137
Order Amending Order Nos. 289 and 290, docket No. R-232 27
Order No. 292, docket No. R-269 32
Order No. 293, docket No. R-263 40
Order No. 294, docket No. R-270 569
Order No. 294-A, docket No. R-270 701
Order No. 295, docket No. R-271 614
Order No. 296, docket No. R-273 682
Order No. 297, docket No. R-274 958
Order No. 298, docket No. R-275 1075
Order No. 299, docket No. R-255 1131
Order No. 300, docket No. R-243 1286
*Ozark-Mahoning Co., et al., docket No. CI60-584, et al 1228
Pacific Gas & Electric Co., docket No. E-7199 422
Pacific Gas & Electric Co., project No. 2106 662
Pacific Gas & Electric Co., project No. 2479 1308
Pacific Gas & Electric Co., et al., issued February 8, 1965 194
Pacific Gas & Electric Co., et al., issued March 5, 1965 416
Pacific Gas & Electric Co., et al., issued April 1, 1965 664
Pacific Gas Transmission Co., docket No. CP62-59 119
Pacific Power & Light Co., docket No. E-7129 1207
Pacific Power & Light Co., docket No. E-7191 685
Pacific Power & Light Co., docket No. E-7197 78, 108
Pacific Power & Light Co., project No. 1447 1076
Pacific Power & Light Co., project No. 2082 52, 1282
*Pan American Petroleum Corp., et al., docket No. G-12325, et al 1228
*Pan American Petroleum Corp. (Operator), et al., docket No. G-16529, et al 1228
Pan American Petroleum Corp., et al., docket No. CI65-300 144, 615, 616, 959

Page

Panhandle Eastern Pipe Line Co., docket No. G-2047, et al. 570

Panhandle Eastern Pipe Line Co., docket No. CI65-858 728

*Panhandle Eastern Pipe Line Co., et al., docket No. CP61-77, et al 1228

Panhandle Eastern Pipe Line Co., docket No. CP64-18 1015

Panhandle Eastern Pipe Line Co., docket No. CP65-71 813

Panhandle Eastern Pipe Line Co., docket No. CP65-87 180, 903

Panhandle Eastern Pipe Line Co., et al., docket No. CP65-110, et al 331

Panhandle Eastern Pipe Line Co., docket No. CP65-244 667

Panhandle Eastern Pipe Line Co., docket No. CP65-255 1295

Panhandle Eastern Pipe Line Co., docket No. CP65-266 873

Panhandle Eastern Pipe Line Co., docket No. CP65-274 875

Panhandle Eastern Pipe Line Co., docket No. CP65-275 1222

Panhandle Eastern Pipe Line Co., et al., docket No. CP65-370, et al 1304

Panhandle Eastern Pipe Line Co., et al., docket No. RP65-18, et al 830

Parrish, Alabama, Gas Board of the City of, docket No. CP65-298 1217

Pasadena, California, City of, project No. 1250 1026

Pennsylvania Power & Light Co., docket No. E-7214 1041

Peoples Gas and Power Co., Inc., docket No. CP64-290 538

*Peppers, Charles C., et al., docket No. G-18332, et al 1228

Permian Oil and Gas Co., The, docket No. G-13603 24

Petersburg, Alaska, City of, project No. 2432 1283

*Petroleum Exploration, Inc., of Texas, et al., docket No. CI61-272, et al 1228

*Petroleum Inc., et al., docket No. CI60-214, et al 1228

*Petroleum Property Management, Inc. (Operator), et al., docket No. CI62-1228, et al 1228

*Phillips Petroleum Co., et al., docket No. G-18523, et al 1228

Phillips Petroleum Co., et al., docket No. CI64-719, et al 1260

*Pioneer Production Corp., et al., docket No. G-18476, et al 1228

Pittsburgh Plate Glass Co., Chemical Division (formerly Columbia Southern Chemical Corp.), docket No. E-6406 582

Placid Oil Co., et al., docket No. CI65-598, et al 866

Plains Gas Farmers' Co-operative Society of Hereford, Texas, docket No. CP65-163 228

Pond's Lodge, Inc., project No. 1413 529

Portland General Electric Co., project No. 2195 876, 1269

Power Authority of the State of New York, project No. 2216 1145

Public Service Co. of Colorado, project No. 2275 417

Public Service Co. of New Hampshire, docket No. E-7152 317

Public Service Co. of New Hampshire, project No. 2470 521

Page

Public Service Co. of New Hampshire, project No. 2481 319, 885, 963
Public Service Co. of Oklahoma, docket No. E–7179, et al 302
Public Service Electric and Gas Co., et al., project No. 2309 977
Public Utility District No. 1 of Douglas County, Washington, project No. 2149 170
Public Utility District No. 2 of Grant County, Washington, project No. 2114 710
*Pure Oil Co., The (Operator), et al., docket No. G–18881, et al 1228
*Pure Oil Co., The (Operator), et al., docket No. CI61–1252, et al 1228
Pure Oil Co., The, et al., docket No. CI64–1085, et al 1260
*Radcliffe Killam, et al., docket No. G–10764, et al 1228
*Remlig Oil Co., et al., docket No. G–19688, et al 1228
Reserve Oil and Gas Co., docket No. G–18570, et al 1266
*Riddell Petroleum Corp., et al., docket No. CI60–667, et al 1228
*Riffe Petroleum Co., et al., docket No. CI61–198, et al 1228
Rio Sabine, Inc., et al., docket No. CI62–1098, et al 235
Rudman, M. B., et al., docket No. CI65–930, et al 1260
Rumford Falls Power Co., project No. 2333 1016
Sacramento Municipal Utility District, project No. 2101 722, 837
St. Michaels Utilities Commission, et al., docket No. E–7114, et al 172, 564
*Samedan Oil Corp., et al., docket No. CI62–811, et al 1228
*Sands, Caroline Hunt, et al., docket No. CI61–224, et al 1228
Sands, Caroline Hunt and Loyd B. Sands, docket No. RI64–356 583
*Seewald, Hughes (Operator), et al., docket No. G–14953, et al 1228
*Seewald, Hughes, et al., docket No. CI61–14, et al 1228
*Shamrock Oil and Gas Corp., The, et al., docket No. CI60–766, et al 1228
*Shell Oil Co., et al., docket No. G–12336, et al 1228
Shell Oil Co., et al., docket No. G–12951, et al 885
Shell Oil Co., et al., docket No. RI65–475, et al 1274
Shenandoah Gas Co., docket No. CP65–287 1300
Sierra Nevada Power Co., et al., docket No. E–7204 649
Sierra Nevada Power Co., et al., project No. 743, et al 652
Sierra Pacific Power Co., et al., docket No. E–7204 649
Sierra Pacific Power Co., et al., project No. 743, et al 652
Sillin, Jr., Lelan F., docket No. ID–1473 1006
*Sinclair Oil & Gas Co., et al., docket No. G–11744, et al 1228
*Sinclair Oil & Gas Co. (Operator), et al., docket No. G–13299, et al 1228
*Skelly Oil Co., et al., docket No. CI60–602, et al 1228
Skelly Oil Co., et al., docket No. CI64–1225, et al 1260
*Smith, Jas. F. (Operator), et al., docket No. CI62–1559, et al 1228

Page
Socony Mobil Oil Co., Inc., et al., docket No. G–12981, et al. 885
*Socony Mobil Oil Co., Inc., et al., docket No. G–17777, et al. 1228
Socony Mobil Oil Co., Inc., et al., docket No. CI62–825, et al. 1260
Socony Mobil Oil Co., Inc., docket No. RI64–1, et al. 710
Sohio Petroleum Co., docket No. G–17376 715
*Sohio Petroleum Co. (Operator), et al., docket No. G–17791, et al. 1228
*Sohio Petroleum Co., et al., docket No. G–19421, et al. 1228
South Beloit Water, Gas and Electric Co., et al., project No. 2373, et al. 275
*South Carolina Electric & Gas Co., docket No. E–7146 584, 984
South Georgia Natural Gas Co., docket No. CP64–110 98
South Georgia Natural Gas Co., docket No. CP65–224 1209
South Penn Power Co., docket No. E–7218 1186
South San Joaquin Irrigation District, et al., issued March 5, 1965 416
Southern California Edison Co., et al., docket No. E–6821, et al. 174
*Southern California Edison Co., et al., docket No. E-7165 687
Southern California Edison Co., project No. 1390 531
Southern California Edison Co., et al., issued April 1, 1965 664
Southern Natural Gas Co., docket No. CP63-26 698
Southern Natural Gas Co., et al., docket No. CP64-259, et al. 729
Southern Natural Gas Co., et al., docket No. CP65-51, et al. 517
Southern Natural Gas Co., docket No. CP65-81 53
Southern Natural Gas Co., docket No. CP65-98 25
Southern Natural Gas Co., docket No. CP65–290 1052
Southern Natural Gas Co., docket No. CP65-319 1053
Southern Natural Gas Co., et al., docket No. RP63-4 308
*Southern Natural Gas Co., et al., docket No. RP63-7 1077
Southern Natural Gas Co., et al., docket No. RP65-13, et al. 830
Southern Natural Gas Co., et al., docket No. RP65-33, et al. 19
Southern Natural Gas Co., et al., docket No. RP65-55, et al. 837
Southwest Gas Corp., docket No. CP65-99 796
Southwest Gas Corp., docket No. CP65-333 1210
*Southwestern Public Service Co., docket No. E-7038 343, 891
*Spohn, Hugh N., et al., docket No. CI62-721, et al. 1228
*Standard Oil Co. of Texas, a Division of California Oil Co., et al., docket No. CI62-592, et al. 1228
*Statex Petroleum (Operator), et al., docket No. CI61-302, et al. 1228
Stockton Light and Power Co. (of Maryland), et al., docket No. E-7117, et al. 172, 564
Stockton Light and Power Co. (of Virginia), et al., docket No. E-7117, et al. 172, 564

Page

Sugar Hill, Georgia, City of, et al., docket No. CP65-10, et al. 729
Sun Oil Co., et al., docket No. G-8592, et al. 517
*Sun Oil Co. (Mid-Continent Division), et al., docket No. G-12972, et al. 1228
*Sun Oil Co., et al., docket No. CI61-992, et al. 1228
Sun Oil Co., docket No. CI65-427 84
Sun Oil Co., issued January 6, 1965 26
Sun Oil Co., issued March 5, 1965 421
*Sunac Petroleum Corp., et al., docket No. CI61-609, et al. 1228
Sunray DX Oil Co., docket No. G-6822, et al. 128
Superior Oil Co., The, et al., docket No. G-12949, et al. 885
*Superior Oil Co., The, et al., docket No. G-16878, et al. 1228
Superior Oil Co., The, et al., docket No. RI64-273, et al. 1268
Superior Oil Co., The, et al., docket No. CI65-300 144, 615, 616, 959
Tacoma, Washington, City of, project No. 1862 653
*Tenneco Oil Co., et al., docket No. CI61-1615, et al. 1228
Tennessee Gas Transmission Co., docket No. CP64-4 10
Tennessee Gas Transmission Co., et al., docket No. CP64-165, et al. 729
Tennessee Gas Transmission Co., docket No. CP64-218 (Phase II) 55
Tennessee Gas Transmission Co., et al., docket No. CP65-58, et al. 82, 204, 213, 295, 534, 901
Tennessee Gas Transmission Co., et al., docket No. CP65-93, et al. 617
Tennessee Gas Transmission Co., docket No. CP65-120 657
Tennessee Gas Transmission Co., docket No. CP65-157, et al. 702
Tennessee Gas Transmission Co., docket No. CP65-158 704
Tennessee Gas Transmission Co., docket No. CP65-177 565
Tennessee Gas Transmission Co., et al., docket No. CP65-217 989
Tennessee Gas Transmission Co., docket No. CP65-246 815
Tennessee Gas Transmission Co., docket No. CP65-267 421
Tennessee Gas Transmission Co., docket No. CP65-321 1302
Tennessee Gas Transmission Co., et al., docket No. RP65-6, et al. 830
Tennessee Gas Transmission Co., et al., docket No. RP65-56, et al. 837
*Texaco Inc., et al., docket No. G-8087, et al. 1228
*Texaco Inc. (Operator), et al., docket No. G-17015, et al. 1228
Texaco Inc., et al., docket No. G-20451, et al. 1212
Texas Eastern Transmission Corp., docket No. CP64-5 699
Texas Eastern Transmission Corp., et al., docket No. CP64-244 598, 1161

Page

Texas Eastern Transmission Corp., et al., docket No. CP65–85, et al ---- 92
Texas Eastern Transmission Corp., et al., docket No. CP65–124 ---- 90
Texas Eastern Transmission Corp., docket No. CP65–143 ---- 20
Texas Eastern Transmission Corp., et al., docket No. CP65–268 ---- 997
Texas Eastern Transmission Corp., et al., docket No. CP65–296 ---- 1192
Texas Eastern Transmission Corp., et al., docket No. RP65–27, et al ---- 19, 830, 1263
Texas Gas Exploration Corp., et al., docket No. CI64–739, et al ---- 817
Texas Gas Transmission Corp., docket No. CP61–123 ---- 196
Texas Gas Transmission Corp., docket No. CP64–107 ---- 1188
Texas Gas Transmission Corp., et al., docket No. CP65–232, et al ---- 817
Texas Gas Transmission Corp., docket No. CP65–295 ---- 1007
Texas Gas Transmission Corp., et al., docket No. RP65–16, et al ---- 830
Texas Gas Transmission Corp., et al., docket No. RP65–34, et al ---- 19
Texas Gas Transmission Corp., et al., docket No. RP65–57, et al ---- 837
Texas Gas Utilities Co., docket No. CP62–288, et al ---- 1020
Tex-Star Oil & Gas Corp., et al., docket No. RI65–89 ---- 315
*Thomas, Glen F. and George W. Brewer, Jr., d/b/a Thomas & Brewer (Operator), et al., docket No. G–18513, et al ---- 1228
*Thornburg, E. B. and Cleo E. Thornburg, et al., docket No CI60–488, et al ---- 1228
Transcontinental Gas Pipe Line Corp., docket No. CP61–328 ---- 1054
*Transcontinental Gas Pipe Line Corp., docket No. CP63–222 ---- 237, 818
Transcontinental Gas Pipe Line Corp., docket No. CP64–96 ---- 330
Transcontinental Gas Pipe Line Corp., et al., docket No. CP64–96, et al ---- 821, 823
Transcontinental Gas Pipe Line Corp., et al., docket No. CP64–270, et al ---- 303, 729
Transcontinental Gas Pipe Line Corp., docket No. CP65–70 ---- 669
Transcontinental Gas Pipe Line Corp., et al., docket No. CP65–232, et al ---- 817
Transcontinental Gas Pipe Line Corp., et al., docket No. CP65–296 ---- 1192
Transcontinental Gas Pipe Line Corp., docket No. CP65–306 ---- 1009

Page

Transcontinental Gas Pipe Line Corp., et al., docket No. CP65–308 1060
Transcontinental Gas Pipe Line Corp., docket No. CP65–310 1055
Transcontinental Gas Pipe Line Corp., et al., docket No. RP65–31, et al 19, 830
Transwestern Pipeline Co., et al., docket No. CP61–299, et al 36
Transwestern Pipeline Co., docket No. CP62–293 41
Transwestern Pipeline Co., docket No. CP63–143 700
*Transwestern Pipeline Co., et al., docket No. CP63–320, et al 1228
Transwestern Pipeline Co., docket No. CP65–103 70
Transwestern Pipeline Co., et al., docket No. CP65–148, et al 120, 1189
Transwestern Pipeline Co., docket No. CP65–167 214
Transwestern Pipeline Co., docket No. CP65–180 566
Transwestern Pipeline Co., docket No. CP65–192 230
Transwestern Pipeline Co., docket No. CP65–285 1011
Transwestern Pipeline Co., et al., docket No. CP65–362, et al 1304
Tribune Oil Corp., et al., docket No. G–4335, et al 827
Trunkline Gas Co., et al., docket No. CI65–300 144, 615, 616, 959
Trunkline Gas Co., docket No. CP65–117 567
Trunkline Gas Co., docket No. CP65–174 122
Trunkline Gas Co., docket No. CP65–258 1056
Trunkline Gas Co., et al., docket No. CP65–382 1298
Trunkline Gas Co., et al., docket No. RI64–273, et al 1268
Trunkline Gas Co., et al., docket No. RP65–8, et al 18
Union Light, Heat and Power Co., The, et al., docket No. E–7203, et al 109
*Union Oil Co. of California, et al., docket No. G–12908, et al 1228
Union Oil Co. of California, docket No. G–16602, et al 893
Union Oil Co. of California, et al., docket No. CI65–300 144, 615, 616, 959
*United Carbon Co., et al., docket No. G–20308, et al 1228
United Fuel Gas Co., et al., docket No. G–20270, et al 123, 619
United Fuel Gas Co., docket No. CP63–305 523
United Fuel Gas Co., docket No. CP65–207 424
United Fuel Gas Co., et al., docket No. RP65–22, et al 830, 1263
United Fuel Gas Co., docket No. RP65–39 312
United Fuel Gas Co., et al., docket No. RP65–39, et al 713
United Gas Pipe Line Co., docket No. G–13002 734
United Gas Pipe Line Co., docket No. CP60–14 1013
United Gas Pipe Line Co., docket No. CP64–226 11
United Gas Pipe Line Co., docket No. CP65–75 216
United Gas Pipe Line Co., docket No. CP65–88 85
United Gas Pipe Line Co., docket No. CP65–90 425
United Gas Pipe Line Co., docket No. CP65–105 13

Page
United Gas Pipe Line Co., docket No. CP65–111 124
United Gas Pipe Line Co., docket No. CP65–119 21
United Gas Pipe Line Co., docket No. CP65–183 524
United Gas Pipe Line Co., docket No. CP65–187 1058
United Gas Pipe Line Co., docket No. CP65–189 532
United Gas Pipe Line Co., docket No. CP65–199 525
United Gas Pipe Line Co., docket No. CP65–249 798
United Gas Pipe Line Co., docket No. CP65–294 1270
United Gas Pipe Line Co., docket No. CP65–302 1059
United Gas Pipe Line Co., et al., docket No. CP65–308 1060
United Gas Pipe Line Co., docket No. RP61–18, et al 304
United Gas Pipe Line Co., et al., docket No. RP61–18, et al 837
*United Gas Pipe Line Co., et al., docket No. RP63–7 1077
United Gas Pipe Line Co., et al., docket No. RP65–15, et al 830
United States Department of the Interior, Bonneville Power Administration, docket No. E–7208 427
United States Department of the Interior, Southeastern Power Administration, docket No. E–7002 1284
United States Department of the Interior, Southwestern Power Administration, docket No. E–7172 217
United States Department of the Interior, Southwestern Power Administration, Sam Rayburn Dam Project, docket No. E–7201 930
Urbana Pipe Line Co., et al., docket No. CP64–80, et al 235
Utah Power & Light Co., docket No. E–7127 314
Utah Power & Light Co., project No. 814 297
Valley Gas Transmission, Inc., et al., docket No. CI62–124, et al 604
Valley Gas Transmission, Inc., et al., docket No. CP65–123, et al 617
Valley Gas Transmission, Inc., docket No. CP65–283 1062
*Van Grisso Oil Co., et al., docket No. G–18450, et al 1228
*Van Hoesen, C. R., Agent, et al., docket No. CI60–526, et al 1228
Vanceburg Electric Light, Heat and Power System, et al., docket No. E–7184 406, 654
Vandelaar, Jack and Dorothy A. Vandelaar, d/b/a Panamint Springs Resort, project No. 1764 401
*Varel, Daniel W., et al., docket No. CI61–139, et al 1228
Vermont Gas Systems, Inc., docket No. CP65–141, et al 142, 899
*Vickers Petroleum Co. Inc., (Operator), The, et al., docket No. CI60–632, et al 1228
Virginia Electric & Power Co., docket No. E–6684 200
Virginia Electric & Power Co., project No. 2462 895, 1286
Virginia Electric & Power Co., project No. 2463 1127
Warren Petroleum Corp., et al., docket No. G–20426 1048

Page
Warren Petroleum Corp. (Operator), et al., G–20478, et al. 1212
Warrior River Electric Cooperative Association, project No. 2102 540
Washington, Georgia, City of, et al., docket No. CP64–304, et al. 821
Washington Water Power Co., The, project No. 204 75
Water District No. 97 of King County, Washington, project No. 2316 1311
Water Power Project, Joint Use of, docket No. R–249 711
Wayland, Iowa, Town of, docket No. CP64–295 606
Webb, William G., et al., docket No. G–6887, et al. 1133
*Western Light & Telephone Co., Inc., docket No. E–7187 1147
Western Massachusetts Electric Co., project No. 2485 408
*Westland Oil Development Corp., et al., docket No. G–18996, et al. 1228
*Wetmore, Kansas, City of, docket No. CP64–177 851
Wheeler Gas Co., docket No. CP64–191 960
*Wilcox Oil Co., et al., docket No. G–18176, et al. 1228
Wisconsin Michigan Power Co., project No. 2357 526
Wisconsin Power & Light Co., docket No. CP65–272 1043
Wisconsin Power & Light Co., et al., project No. 2347, et al. 275
*Wyant Ventures, Ltd., et al., docket No. G–20327, et al. 1228
Zenith Gas System, Inc., et al., docket No. CP65-316, et al. 1137
Zenith Natural Gas Co., et al., docket No. CP65–316, et al. 1137

TABLE OF CASES CITED

Page

Alabama Power Co. (project No. 2146), 18 FPC 257 1106
Alabama-Tennessee Natural Gas Co. (G–5471), 27 FPC 1180 581
Alabama-Tennessee Natural Gas Co. (G–5471), 31 FPC 208 354, 575, 1278
Allegheny Land and Mineral Co. (G–19030), 25 FPC 886 1273
Aluminum Company of America (IT–5696), 13 FPC 14 315
Amerada Petroleum Corp. (CI62–1544), 31 FPC 623 625
Amerada Petroleum Corp. (CI62–1544), 31 FPC 1315 629
Amerada Petroleum Corp. *v.* F.P.C., 334 F. 2d 404 (1964) 239, 777
Amere Gas Utilities Co. (G–6358), 15 FPC 760 575
American Louisiana Pipe Line Co. (G–2306), 20 FPC 575 264
American Louisiana Pipe Line Co. (G–2306), 30 FPC 698 250, 509
American Louisiana Pipe Line Co. (G–18419), 28 FPC 482 578
American Louisiana Pipe Line Co. (G–18419), 31 FPC 1579 579
American Power and Light Co. *v.* S.E.C., 141 F. 2d 606 (1944) 166
Amos Treat & Co. *v.* S.E.C., 306 F. 2d 260 (1962) 47
Anchor Hocking Glass Corp. (G–204), 2 FPC 930 248
Appalachian Power Co. (project No. 2376), 32 FPC 591 895
Ashbacker Radio Corp. *v.* F.C.C., 326 U.S. 327 (1945) 913, 1169
Atlantic Gulf Gas Co. (G–887), 10 FPC 79 921
Atlantic Refining Co., The *v.* F.P.C., 316 F. 2d 677 (1963) 625, 1235
Atlantic Refining Co., The *v.* P.S.C. of New York, 360 U.S. 378 (1959) 287, 584, 624, 1235
Atlantic Seaboard Corp. (G–1384), 11 FPC 43 376
Atlantic Seaboard Corp. (G–16401), 28 FPC 860 620
Atlantic Seaboard Corp. (G–20272), 31 FPC 1342 506
Atlantic Seaboard Corp. (CP62–43), 27 FPC 370 273
Battle Creek Gas Co. *v.* F.P.C., 281 F. 2d 42 (1960) 921
Bellows Falls Hydro-Electric Corp. (IT–5584), 2 FPC 380 594
Ben Bolt Gathering Co. (G–20032), 26 FPC 825 83
Ben Bolt Gathering Co. *v.* F.P.C., 323 F. 2d 610 (1963) 83
Berkshire Employees Association *v.* N.L.R.B., 121 F. 2d 235 (1941) 44
Bluefield Water Works and Improvement Co. *v.* P.S.C. of West Virginia, 262 U.S. 679 (1923) 385
Burnett, H. N. (RI64–334), 30 FPC 1384–A 809, 1267
California Electric Power Co. *v.* F.P.C., 199 F. 2d 206 (1952), cert. denied 345 U.S. 934 (1953) 756
California Oil Co., Western Division *v.* F.P.C., 315 F. 2d 652 (1963) 629, 1235
California, People of the State of *v.* F.P.C., 296 F. 2d 348 (1961) 155
California, People of the State of *v.* F.P.C., 369 U.S. 482 (1962) 161, 290, 689
California, People of the State of *v.* Lo-Vaca Gathering Co., 379 U.S. 366 (1965) 240, 747
Callery Properties, Inc. *v.* F.P.C., 335 F. 2d 1004 (1964), cert. granted *sub nom.* F.P.C. *v.* Callery Properties, Inc., 380 U.S. 931 (1965) 583, 643, 683, 1190
Carey, *et al.* *v.* U.S., 276 F. 2d 385 (1960) 1102
Carolina Pipeline Co. *v.* Southern Natural Gas Co. (RP63–4), 31 FPC 705 263, 308
Caterpillar Tractor Co. *v.* Collins Machinery Co., 286 F. 2d 446 (1960) 1102
Central Illinois Public Service Co. *v.* F.P.C., 338 F. 2d 682 (1964) 776
Central Nebraska Public Power & Irrigation District *v.* F.P.C., 160 F. 2d 782 (1947), cert. denied 332 U.S. 765 (1948) 986
Champlin Rfg. Co. *v.* U.S., 329 U.S. 29 (1946) 248
Chandeleur Pipe Line Co. (CP64–37), 30 FPC 1515 273
Cities Service Gas Co. (G–18799), 25 FPC 582 581
Cities Service Gas Co. (G–18799), 30 FPC 158 581
Cities Service Gas Co. *v.* F.P.C., 337 F. 2d 97 (1964) 233
Cities Service Production Co. (G–9510), 28 FPC 1114 1213

Page

Clegg & Hunt (Operator) (RI60–405), 33 FPC 808 — 1267
Cleveland, Ohio, City of *v.* Hope Natural Gas Co. (RP64–3), 32 FPC 156 — 155
Cleveland, Ohio, City of *v.* New York State Natural Gas Corp. (RP64–14), 32 FPC 157 — 155
Coca Cola Bottling Co., Inc. *v.* Commissioner of Internal Revenue, 127 F. 2d 430 (1942) — 1102
Colonial Airlines, Inc. (Motions), 9 CAB 273 — 44
Colorado Interstate Gas Co. *v.* F.P.C., 324 U.S. 581 (1945) — 385
Colton, California, City of *v.* Southern California Edison Co. (E–6821), 26 FPC 223 — 315
Columbia River Basin, Headwater Benefits Investigation (E–6384), 29 FPC 238 — 300, 977
Columbian Carbon Co. (G–19782), 25 FPC 365 — 1273
Commonwealth and Southern Corp. *v.* S.E.C., 134 F. 2d 747 (1943) — 165
Connecticut Light & Power Co. *v.* F.P.C., 324 U.S. 515 (1945) — 742, 1154
Connecticut River Power Co. (E–6346), 10 FPC 1255 — 1022
Consolidated Edison Co. of N.Y., Inc.(project No. 2338), 33 FPC 428 — 891
Continental Oil Co. (G–11024), 27 FPC 96 — 627
Covington and Lexington Turnpike Road Co. *v.* Sandford, 164 U.S. 578 (1896) — 1181
Cox, Edwin L. (CI61–153), 32 FPC 1301 — 628, 683
Dairyland Power Cooperative (E–7113), 32 FPC 529 — 39, 792, 1136
Detroit, Michigan, City of *v.* F.P.C., 230 F. 2d 810 (1955), cert. denied 352 U.S. 829 (1956) — 1280
Duke Power Co. (E–7121), 30 FPC 1004 — 693
East Tennessee Natural Gas Co. (CP63–212), 30 FPC 1197 — 554
El Paso Natural Gas Co. (G–2018), 13 FPC 421 — 374
El Paso Natural Gas Co. (G–4769), 22 FPC 260 — 575
El Paso Natural Gas Co. (G–4769), 28 FPC 688 — 578
El Paso Natural Gas Co. (G–12580), 22 FPC 900 — 513
El Paso Natural Gas Co. (G–16235), 26 FPC 687 — 262
El Paso Natural Gas Co. (CP60–72), 27 FPC 1134 — 629
El Paso Natural Gas Co. (CP62–265), 29 FPC 984 — 921
El Paso Natural Gas Co (CP65–82), 32 FPC 1468 — 946
Fay *v.* Douds, 172 F. 2d 720 (1949) — 988
F.C.C. *v.* Schreiber, 381 U.S. 279 (1965) — 1287
F.P.C. *v.* Amerada Petroleum Corp., 379 U.S. 687 (1965) — 241
F.P.C. *v.* Arizona Edison Co., 194 F. 2d 679 (1952) — 1154
F.P.C. *v.* East Ohio Gas Co., 338 U.S. 464 (1950) — 247, 767
F.P.C. *v.* Hope Natural Gas Co., 320 U.S. 591 (1944) — 160, 272, 385, 624
F.P.C. *v.* Metropolitan Edison Co., 304 U.S. 375 (1938) — 654
F.P.C. *v.* Natural Gas Pipeline Co., 315 U.S. 575 (1942) — 354, 1181
F.P.C. *v.* Sierra Pacific Power Co., 350 U.S. 348 (1956) — 89, 262, 723, 819, 1085
F.P.C. *v.* Southern California Edison Co., 376 U.S. 205 (1964) — 39, 176, 742, 1154
F.P.C. *v.* Tennessee Gas Transmission Co., 371 U.S. 145 (1962) — 203
F.P.C. *v.* Texaco Inc., 377 U.S. 33 (1964) — 84
F.P.C. *v.* Transcontinental Gas Pipe Line Corp., 365 U.S. 1 (1961) — 241, 442
F.T.C. *v.* Cement Institute, 333 U.S. 683 (1948) — 45, 785
First Iowa Hydro-Electric Cooperative *v.* F.P.C., 328 U.S. 152 (1946) — 439
Foster Petroleum Corp. (RI64–17), 30 FPC 672 — 809, 1267
Franklin, Illinois, Village of (G–8471), 17 FPC 118 — 858
General Gas Pipe Line Corp. (G–123), 2 FPC 705 — 921
General Public Utility Corp., 32 SEC 807 — 1149
General Public Utility Corp., 37 SEC 28 — 1149
Georgia Power Co. (project No. 2303), 27 FPC 663 — 521, 935
Georgia Power Co. (project No. 2413), 33 FPC 934 — 521
Gibbons *v.* Ogden, 22 U.S. 1 (1824) — 429
Gilligan, Will & Co. *v.* S.E.C., 267 F. 2d 461 (1959) — 47
Granite City Steel Co. *v.* F.P.C., 320 F. 2d 711 (1963) — 946
Grant City, Missouri, City of (CP62–303), 29 FPC 754 — 921
Greenup, Illinois, Village of (CP63–157), 30 FPC 28 — 855
Grigsby, Jack W. (Operator) (RI61–96), 32 FPC 529 — 827
Gulf States Utilities Co. (IT–5509), 1 FPC 522 — 349
Hamilton, Massachusetts, Town of *v.* Department of Public Utilities of Massachusetts, 190 N.E. 2d 545 (1963) — 464
Hartford Electric Light Co. *v.* F.P.C., 131 F. 2d 953 (1942), cert. denied 319 U.S. 471 (1943) — 315, 746, 1154

Page

Harvey *v.* Richard, 7 So. 2d 674 (1942) 1102

Hope Natural Gas Co. (G–5474), 28 FPC 958 152

Hope Natural Gas Co. (CP63–272), 33 FPC 150 997, 1030

Houston Texas Gas and Oil Corp. (G–9262), 16 FPC 118 921

Houston Texas Gas and Oil Corp. (G–9262), 17 FPC 542 1205

Humble Oil & Refining Co. (G–9287), 32 FPC 49 129, 638, 828, 830, 839, 893, 1213, 1275

Humble Oil & Refining Co. (G–9287), 32 FPC 873 830

Humble Oil & Refining Co. (G–9287), 33 FPC 18 831

Humble Oil & Refining Co. (G–9287), 33 FPC 19 830

Humble Oil & Refining Co. *v.* Trapp, 194 S.W. 2d 781 (1946) 1102

Hunt, H. L. (RI62–467), 28 FPC 897 583

Hunt, Hassie, Trust (RI64–53), 30 FPC 856 1275

Hunt, Hassie, Trust (Operator) (G–19115), 30 FPC 1438 625

Hunt, Hassie, Trust (Operator) (G–19115), 31 FPC 447 683

Hunt, Hassie, Trust (Operator) (G–19115), 31 FPC 946 683

Hunt, Hassie, Trust (Operator) (G–19115), 32 FPC 874 683

Hunt Oil Co. (G–9065), 28 FPC 623 583

Hunt Oil Co. (G–9065), 30 FPC 220 839

Idaho Power Co. (project No. 1971), 14 FPC 55 447

Idaho Power Co. (project No. 1971), 21 FPC 361 447

Idaho Power Co. (project No. 1971), 22 FPC 1001 447

Idaho Power Co. (project No. 1971), 24 FPC 37 447

Idaho Power Co. (project No. 1971), 24 FPC 1066 447

Idaho Power Co. (project No. 1971), 29 FPC 404 447

Idaho Power Co. (project No. 1971), 29 FPC 572 1107

Idaho Power Co. (project No. 1971), 14 FPC 55, *affirmed* National Hells Canyon Association *v.* F.P.C., 237 F. 2d 777 (1956), cert. denied 353 U.S. 924 (1956) 447

Indiana & Michigan Electric Co. *v.* Public Service Co. of Indiana, Inc. (E–6372), 10 FPC 1315 740

Indiana & Michigan Electric Co. (E–7089), 33 FPC 739 1153

Indiana & Michigan Electric Co. *v.* F.P.C., 224 F. Supp. 166 (1963) 741

I.C.C. *v.* Goodrich Transit Co., 224 U.S. 194 (1911) 1287

Interstate Light and Power Co. (E–6252), 10 FPC 225, *affirmed sub nom.* State of Wisconsin *v.* F.P.C., 201 F. 2d 183 (1952), cert. denied 345 U.S. 934 (1953) 748

Interstate Natural Gas Co., Inc. *v.* F.P.C., 331 U.S. 682 (1947) 767

Jersey Central Power & Light Co. (G–1324), 9 FPC 717 248

Jersey Central Power & Light Co. *v.* F.P.C., 319 U.S. 61 (1943) 767, 1154

Jupiter Corp., The (RI63–212), 33 FPC 204 536

Kansas-Nebraska Natural Gas Co., Inc. (CP62–215), 29 FPC 1058 921

Kansas Pipeline & Gas Co. (G–106), 2 FPC 29 921

Kearns, The State ex rel. *v.* Ohio Power Co., 127 N.E. 2d 394 (1955) 459

Lone Star Gas Co. *v.* Texas, 304 U.S. 224 (1938) 777

Los Angeles Gas Co. *v.* Railroad Commission of California, 289 U.S. 287 (1933) 1181

Lo-Vaca Gathering Co. (CI60–693), 26 FPC 606, *affirmed sub nom.* People of the State of California *v.* Lo-Vaca Gathering Co., 379 U.S. 366 (1965) 676

Lo-Vaca Gathering Co. *v.* F.P.C., 323 F. 2d 190 (1964) 239

Lynchburg Gas Co. *v.* F.P.C., 336 F. 2d 942 (1964) 113, 124, 288, 308, 619

Mahoning Investment Co. *v.* U.S., 3 F. Supp. 622 (1933) 1102

Manufacturers Light and Heat Co., The (CP61–60), 26 FPC 537 154

Market Street Railway Co. *v.* Railroad Commission of California, 324 U.S. 548 (1945) 776

Marquette Cement Manufacturing Co. *v.* F.T.C., 147 F. 2d 589 (1945) 45

Mengel & Bro. Co. *v.* Handy Chocolate Co., 10 F. 2d 293 (1926) 1102

Michigan Consolidated Gas Co. *v.* F.P.C., 203 F. 2d 895 (1953) 263

Michigan Consolidated Gas Co. *v.* Panhandle Eastern Pipe Line Co., 173 F. 2d 784 (1949) 513

Michigan Gas and Electric Co. *v.* F.P.C., 290 F. 2d 374 (1961), cert. denied 368 U.S. 897 (1962) 916

Michigan Wisconsin Pipe Line Co. (G–12292), 28 FPC 482 578

Michigan Wisconsin Pipe Line Co. (CP64–109), 32 FPC 737 513, 559

Michigan Wisconsin Pipe Line Co. (RP64–38), 31 FPC 1579 579

Mid-America Pipeline Co. *v.* F.P.C., 330 F. 2d 226 (1964) 255, 1234

Midwestern Gas Transmission Co. (G–16841), 30 FPC 150 832

Page

Midwestern Gas Transmission Co. (G–18313), 22 FPC 775 547, 921
Midwestern Gas Transmission Co. (RP61–19), 32 FPC 993 1280
Midwestern Gas Transmission Co. *v.* F.P.C., 258 F. 2d 660 (1958) 918
Minneapolis Gas Co. *v.* F.P.C., 278 F. 2d 870 (1960), cert. denied 364 U.S. 891 (1961) 915, 1178
Miravalle Supply Co., Inc. *v.* El Campo Rice Milling Co., 181 F. 2d 679 (1950) 1102
Mississippi River Fuel Corp. *v.* F.P.C., 202 F. 2d 899 (1953) 1274
Mississippi River Fuel Corp. *v.* F.P.C., 252 F. 2d 619 (1957), cert. denied 355 U.S. 904 (1957) 1100
Mobile Gas Service Corp. *v.* F.P.C., 215 F. 2d 883 (1954) 1081
Montana-Dakota Utilities Co. *v.* Northwestern Public Service Co., 341 U.S. 246 (1951) 1081
Montana Power Co., The (G–1684), 10 FPC 950 248
Montana Power Co., The *v.* F.P.C., 298 F. 2d 335 (1962) 647
Montana Power Co., The *v.* F.P.C., 330 F. 2d 781 (1964) 234
Morgan *v.* U.S., 304 U.S. 1 (1938) 781
Namekagon Hydro Co. (project No. 2097), 12 FPC 203, *affirmed* Namekagon Hydro Co. *v.* F.P.C., 216 F. 2d 509 (1954) 439
Namekagon Hydro Co. *v.* F.P.C., 216 F. 2d 509 (1954) 458
National Coal Association *v.* F.P.C., 247 F. 2d 86 (1957) 560
National Fuels Corp. (G–20426), 33 FPC 1048 1213
N.L.R.B. *v.* Baldwin Locomotive Works, 128 F. 2d 39 (1942) 784
N.L.R.B. *v.* Botany Worsted Mills, 106 F. 2d 263 (1939) 760
Natural Gas Pipeline Co. of America (RP61–8), 28 FPC 731 577
New Hampshire Water Resources Board (E–6807), 20 FPC 99 291, 1016
New York State Natural Gas Corp. (RP64–40), 32 FPC 198 152
Niagara Mohawk Power Corp. (project No. 2424), 32 FPC 1404 413
Norfolk and Western R. R. *v.* U.S., 287 U.S. 134 (1932) 1287
North American Airlines *v.* C.A.B., 240 F. 2d 867 (1956) 783
North Carolina, State of *v.* Municipal Corp. of Scotland Neck, 243 N.C. 193, 90 S.E. 2d 519 (1955) 347
Northern Natural Gas Co. (G–2217), 14 FPC 11 1178
Northern Natural Gas Co. (G–17485), 22 FPC 164 921
Northern Natural Gas Co. (G–19040), 25 FPC 431 579
Northern Natural Gas Co. (CP61–1), 25 FPC 540 921
Northern Natural Gas Co. (CP61–132), 28 FPC 1155 283
Northern Natural Gas Co. (CP61–132), 29 FPC 450 256
Northern Natural Gas Co. (CP62–85), 30 FPC 859 921, 1166
Northern Natural Gas Co. (CP64–228), 33 FPC 501 1169
Northern Natural Gas Co. (RP64–15), 31 FPC 7 504
Northwest Paper Co. *v.* F.P.C., 344 F. 2d 47 (1965) 987
Ohio Bell Telephone Co. *v.* P.U.C. of Ohio, 301 U.S. 292 (1937) 988
Ohio Fuel Gas Co., The (CP62–153), 29 FPC 1134 154
O'Malley *v.* Wagner, 76 S.W. 356 (1903) 1102
Orr *v.* Mutual Life Insurance Co. of New York, 64 F. 2d 561 (1933) 1102
Otis and Co., 31 SEC 380 44
Otter Tail Power Co. (IT–5544), 2 FPC 134 349, 757
Otter Tail Power Co. (E–6196), 8 FPC 393 743
Ottinger *v.* General Motors Corp., 27 F. Supp. 508 (1939) 1102
Pacific Northwest Pipeline Corp. (G–13018), 22 FPC 1091 165
Pacific Northwest Pipeline Corp. (G–13018), 23 FPC 350, *affirmed sub nom.* State of California *v.* F.P.C., 296 F. 2d 348 (1961), *reversed on other grounds* 369 U.S. 482 (1962) 155, 165
Pacific Northwest Power Co. (project No. 2243), 31 FPC 47 458
Pacific Northwest Power Co. (project No. 2243), 31 FPC 1051 969
Pacific Power & Light Co. *v.* F.P.C., 111 F. 2d 1014 (1940) 694, 1149
Pacific Power & Light Co. *v.* F.P.C., 333 F. 2d 689 (1964) 1282
Pacific States Corp. *v.* Hall, 166 F. 2d 668 (1948) 1102
Panhandle Eastern Pipe Line Co. (G–1705), 15 FPC 1421 860, 921
Panhandle Eastern Pipe Line Co. (G–2506), 32 FPC 636 1248
Panhandle Eastern Pipe Line Co. (CP60–103), 27 FPC 35 627
Panhandle Eastern Pipe Line Co. (CP63–159), 30 FPC 1260 283
Panhandle Eastern Pipe Line Co. (RP64–18), 31 FPC 736 579
Panhandle Eastern Pipe Line Co. *v.* F.P.C., 305 F. 2d 763 (1962) 1248
Panhandle Eastern Pipe Line Co. *v.* F.P.C., 316 F. 2d 659 (1962), cert. denied 375 U.S. 881 (1963) 578
Panhandle Eastern Pipe Line Co. *v.* P.S.C. of Indiana, 332 U.S. 507 (1947) 775

Page

Pennsylvania Water and Power Co. (IT-5915), 8 FPC 1 — 377, 741
Pennsylvania Water and Power Co. *v.* F.P.C., 193 F. 2d 230 (1951), *affirmed* 343 U.S. 414 (1951) — 741
Peoples Natural Gas Co. *v.* P.S.C. of Pennsylvania, 270 U.S. 550 (1926) — 747
Peoria Life Insurance Co. *v.* Poynor, 297 S.W. 788 (1927) — 1102
Phillips Petroleum Co. (G-11217), 31 FPC 774 — 885
Phillips Petroleum Co. *v.* F.P.C., 258 F. 2d 906 (1958) — 620
Phillips *v.* S.E.C., 185 F. 2d 746 (1950) — 163
Pipe Line Cases, The, 234 U.S. 548 (1914) — 248
Pittsburgh, Pennsylvania, City of *v.* F.P.C., 237 F. 2d 741 (1956) — 256, 290
Placid Oil Co. (G-13183), 30 FPC 283, *reversed sub nom.* Callery Properties, Inc. *v.* F.P.C., 335 F. 2d 1004 (1965) — 683
Portland General Electric Co. (project No. 2030), 24 FPC 408 — 489
Power Authority of the State of New York (project No. 2216), 18 FPC 344 — 447
Power Authority of the State of New York (project No. 2216), 19 FPC 186 — 447
Power Authority of the State of New York (project No. 2216), 20 FPC 823 — 447
P.S.C. of New York *v.* F.P.C., 287 F. 2d 146 (1960), *affirmed sub nom.* Hope Natural Gas Co. *v.* P.S.C. of New York, 365 U.S. 880 (1961) — 583
P.S.C. of New York *v.* F.P.C., 327 F. 2d 893 (1964) — 203, 755
P.S.C. of New York *v.* F.P.C., 329 F. 2d 242 (1964), cert. denied 377 U.S. 963 (1964) — 643, 1124
P.S.C. of Oklahoma (E-6816), 25 FPC 656 — 377
P.U.C. of Ohio *v.* United Fuel Gas Co., 317 U.S. 456 (1943) — 923
P.U.C. of Rhode Island *v.* Attleboro Steam & Electric Co., 273 U.S. 83 (1927) — 747
P.U.D. No. 1 of Pend Oreille County, Washington *v.* F.P.C., 308 F. 2d 318 (1962), cert. denied 372 U.S. 908 (1963), rehearing denied 372 U.S. 956 (1963) — 447
P.U.D. No. 1 of Skamania County, Washington (project No. 2199), 32 FPC 444 — 458
Puget Sound Power & Light Co. *v.* F.P.C., 137 F. 2d 701 (1943) — 1181
Puget Sound Traction, Light and Power Co. *v.* Reynolds, 244 U.S. 574 (1917) — 915
Railroad Commission of Wisconsin *v.* Chicago, Burlington & Quincy R.R. Co., 257 U.S. 563 (1922) — 779
Ravencliffs Development Co. (G-17312), 28 FPC 349 — 1273
Reagan *v.* Farmers' Loan & Trust Co., 154 U.S. 362 (1894) — 1181
Robert W. Parsons, The, 191 U.S. 17 (1903) — 413
Rochester Gas and Electric Corp. *v.* F.P.C., 344 F. 2d 594 (1965) — 988
Sabine Pipe Line Co. (CP64-97), 31 FPC 696 — 264
Safe Harbor Water Power Corp. *v.* F.P.C., 179 F. 2d 179 (1949) — 743
St. Louis and San Francisco R. *v.* Gill, 156 U.S. 649 (1895) — 915
Scallan *v.* Simmesport State Bank, 129 So. 2d 49 (1961) — 1102
Sears, H. F. (G-10494), 31 FPC 585 — 809, 1267
Seattle, Washington, City of (project No. 2144), 26 FPC 54 — 447
Seattle, Washington, City of (project No. 2144), 26 FPC 463 — 447
S.E.C. *v.* R. A. Holman & Co., 323 F. 2d 284 (1963) — 47
Segal and Smith, 5 FCC 3 — 44
Shell Oil Co. (G-9446), 28 FPC 257 — 130
Shell Oil Co. (CI62-1037), 32 FPC 34 — 1242
Shell Oil Co. (RI61-515), 29 FPC 498, *affirmed* Shell Oil Co. *v.* F.P.C., 334 F. 2d 1003 (1964) — 886
Shell Oil Co. (RI61-515), 29 FPC 851, *affirmed* Shell Oil Co. *v.* F.P.C., 334 F. 2d 1003 (1964) — 969
Shrewsbury Municipal Light Department *v.* New England Power Co. (E-7021), 32 FPC 373 — 655
Sinclair Oil & Gas Co. (G-9291), 30 FPC 5 — 130
Skelly Oil Co. (G-18638), 28 FPC 401 — 643
Skelly Oil Co. (G-18638), 28 FPC 1065 — 643
Socony Mobil Oil Co., Inc. (G-13780), 27 FPC 347 — 583
Sohio Petroleum Co. (G-8488), 30 FPC 1623 — 1049
South Carolina Electric & Gas Co. (E-6104), 7 FPC 606, *affirmed sub nom.* South Carolina Public Service Authority *v.* F.P.C., 170 F. 2d 948 (1948), cert. denied 336 U.S. 953 (1949) — 693

Page

South Carolina Electric & Gas Co. (E–6468), 29 FPC 624, *affirmed* South Carolina Electric & Gas Co. *v.* F.P.C., 338 F. 2d 898 (1964) 202, 584, 986
South Carolina Electric & Gas Co. (E–7146), 33 FPC 584 986
South Carolina Electric & Gas Co. *v.* F.P.C., 338 F. 2d 898 (1964) 202, 585, 986
South Carolina Generating Co. (E–6568), 16 FPC 52 372
South Carolina Public Service Authority *v.* F.P.C., 170 F. 2d 948 (1948), cert. denied 336 U.S. 953 (1949) 693, 1183
Southern California Edison Co. (E–7049), 28 FPC 787 693
Southern California Edison Co. (project No. 1930), 8 FPC 364 435
Southern Natural Gas Co. (G–1308), 9 FPC 756 1092
Southern Natural Gas Co. (G–1308), 11 FPC 1262 1092
Southern Natural Gas Co. (G–19632), 25 FPC 925 245, 503
Southern Natural Gas Co. (G–20509), 29 FPC 323 578
Southern Natural Gas Co. (CP63–26), 31 FPC 789 547, 921
Southern Natural Gas Co. (CP63–26), 31 FPC 1387 921
Southern Pacific Terminal Co. *v.* I.C.C., 219 U.S. 498 (1911) 768
Southwest Gas Producing Co., Inc. (Operator) (G–16714), 31 FPC 192 827
Spitzer *v.* Commissioner of Internal Revenue, 153 F. 2d 967 (1946) 776
Standard Oil Co. of California (CI60–333), 27 FPC 1153 628
Steiners Improved Dye Works, Inc., 44 F. 2d 557 (1930) 1102
Sun Oil Co. (G–8288), 32 FPC 894 638
Sun Oil Co. (G–8592), 32 FPC 1183 683, 1249
Sunray Mid-Continent Oil Co. *v.* F.P.C., 364 U.S. 137 (1960) 82, 203
Superior Oil Co., The (G–6067), 32 FPC 241 629, 867
Susquehanna Power Co. (project No. 405), 32 FPC 826 712
Tennessee Gas Transmission Co. (CP61–106), 30 FPC 1477 252
Texaco Inc. (G–8969), 30 FPC 1631 1213
Texaco Inc. (G–17613), 30 FPC 402 887
Texaco Inc. *v.* F.T.C., 336 F. 2d 754 (1964) 47
Texas Eastern Transmission Corp. (G–1693), 11 FPC 211 248, 819
Texas Eastern Transmission Corp. (G–12446), 29 FPC 249, *remanded sub nom.* M. H. Marr *v.* F.P.C., 336 F. 2d 320 (1965), *affirmed* 381 U.S. 392 (1965) 262
Texas Eastern Transmission Corp. (G–12446), 29 FPC 692 252
Texas Eastern Transmission Corp. (G–18968), 24 FPC 364, *affirmed sub nom.* Ohio Fuel Gas Co. *v.* F.P.C., 296 F. 2d 594 (1961) 262
Texas Eastern Transmission Corp. (CP60–122), 28 FPC 1035 547
Texas Gas Transmission Corp. (CP63–327), 30 FPC 689 273
Transcontinental Gas Pipe Line Corp. (G–704), 7 FPC 24 261
Transcontinental Gas Pipe Line Corp. (G–1783), 14 FPC 436 979
Transcontinental Gas Pipe Line Corp. (G–10000), 17 FPC 360 254, 921
Transcontinental Gas Pipe Line Corp. (G–13143), 21 FPC 141 262
Transcontinental Gas Pipe Line Corp. (G–16603), 22 FPC 836 547
Transcontinental Gas Pipe Line Corp. (CP62–143), 27 FPC 858 547
Transcontinental Gas Pipe Line Corp. (CP64–96), 31 FPC 957 239
Trunkline Gas Co. (G–15394), 21 FPC 394 1205
Trunkline Gas Co. (G–15394), 21 FPC 704 146
Trunkline Gas Co. (RP64–19), 31 FPC 743 579
Trunkline Gas Supply Co. (G–882), 8 FPC 250 1166
Tumey *v.* State of Ohio, 273 U.S. 510 (1927) 46
Tyler Gas Service Co. *v.* F.P.C., 247 F. 2d 590 (1957), cert. denied 355 U.S. 895 (1957) 1081
Union Oil Co. of California (G–16602), 32 FPC 1336 893
Union Texas Petroleum (G–13221), 32 FPC 254 625, 683, 867
United Carbon Co. (RI61–269), 26 FPC 715 1273
United Corp., The, 32 SEC 633 44
United Fuel Gas Co. (G–20270), 31 FPC 1342 506
United Fuel Gas Co. (CP61–107), 29 FPC 90 154
United Fuel Gas Co. *v.* Railroad Commission of Kentucky, 278 U.S. 300 (1929) 776
United Gas Improvement Co. *v.* F.P.C., 283 F. 2d 817 (1960), cert. denied *sub nom.* California Co. *v.* United Gas Improvement Co., 365 U.S. 881 (1961) 625, 1244
United Gas Improvement Co. *v.* F.P.C., 290 F. 2d 133 (1961), cert. denied *sub nom.* Sun Oil Co. *v.* United Gas Improvement Co., 368 U.S. 832 (1962) 45
United Gas Improvement Co. *v.* Callery Properties, Inc., 380 U.S. 931 (1965) 1124

Page
United Gas Pipe Line Co. (G–622), 4 FPC 307 1078
United Gas Pipe Line Co. (G–1142), 13 FPC 398 1096
United Gas Pipe Line Co. (G–1750), 11 FPC 1016 1093
United Gas Pipe Line Co. (CP60–36), 30 FPC 329 683
United Gas Pipe Line Co. (CP62–161), 30 FPC 560 784
United Gas Pipe Line Co. (RP61–18), 33 FPC 304 1263
United Gas Pipe Line Co. (RP63–1), 32 FPC 687 839
United Gas Pipe Line Co. *v.* F.P.C., 181 F. 2d 796 (1950), cert. denied 340 U.S. 827 (1951) 1095, 1190
United Gas Pipe Line Co. *v.* F.P.C., 206 F. 2d 842 (1953) 761
United Gas Pipe Line Co. *v.* Memphis Light, Gas and Water Division, 358 U.S. 103 (1958) 1241
United Gas Pipe Line Co. *v.* Mobile Gas Service Corp., 350 U.S. 332 (1956) 262, 624, 756, 1081, 1241, 1281
U.S. *v.* American Trucking Association, 310 U.S. 534 (1940) 987
U.S. *v.* Appalachian Electric Power Co., 311 U.S. 377 (1940) 413
U.S. *v.* Chandler Dunbar Water Power Co., 229 U.S. 53 (1913) 276
U.S. *v.* El Paso Natural Gas Co., 376 U.S. 651 (1964) 143
U.S. *v.* Grand River Dam Authority, 363 U.S. 229 (1960) 585, 987
U.S. *v.* Louisiana, 363 U.S. 1 (1960) 145
U.S. *v.* Morgan, 313 U.S. 409 (1941) 45
U.S. *v.* Morton Salt Co., 338 U.S. 632 (1950) 929
U.S. *v.* P.U.C. of California, 345 U.S. 295 (1953) 315, 655, 747
U.S. *v.* Rio Grande Irrigation Co., 174 U.S. 690 (1899) 429
U.S. *v.* Twin City Power Co., 350 U.S. 222 (1956) 584, 985
U.S. *v.* Willow River Power Co., 324 U.S. 499 (1945) 276
U.S. ex rel Chapman *v.* F.P.C., 345 U.S. 153 (1953) 585
Valvoline Oil Co. *v.* U.S., 308 U.S. 141 (1939) 248
Victor Products Corp. *v.* Yates-American Machine Co., 54 F. 2d 1062 (1932) 1102
Virginia Petroleum Jobbers Association *v.* F.P.C., 259 F. 2d 921 (1958) 969, 1253
Warren Petroleum Corp. (G–20478), 33 FPC 1212 1293
Wisconsin, State of *v.* F.P.C., 201 F. 2d 183 (1952), cert. denied 345 U.S. 934 (1953) 748, 1154
Wisconsin, State of *v.* F.P.C., 292 F. 2d 753 (1961) 1190
Wisconsin Michigan Power Co. (E–6268), 10 FPC 170 743
Wisconsin Michigan Power Co. (E–7026), 31 FPC 1445 .... 349, 506
Wisconsin Michigan Power Co. *v.* F.P.C., 197 F. 2d 472 (1952), cert. denied 345 U.S. 934 (1953) 743
Wisconsin Power & Light Co. (project No. 2347), 33 FPC 275 .... 319, 333, 335, 338, 341, 397, 399, 401, 404, 418, 529, 849
Wisconsin Valley Improvement Co. (E–7178), 32 FPC 678 187
Yates *v.* American Republics Corp., 163 F. 2d 178 (1947) 1102

TABLE OF STATUTES CITED

United States: **Page**

- Act of August 5, 1909, 36 Stat. 180, extended by Act of March 5, 1912, 37 Stat. 72 ... 584, 985
- Administrative Procedure Act of 1946, 60 Stat. 237:
  - Sec. 2(c) ... 46
  - Sec. 4 ... 33, 570, 614, 959
  - Sec. 4(a) ... 683
  - Sec. 5(d) ... 988
  - Sec. 7(d) ... 258
  - Sec. 9(b) ... 277
  - Sec. 12 ... 750
- Arbitration Act, 61 Stat. 669 ... 648
- Bonneville Act, The, 50 Stat. 731 (1937), 16 U.S.C. 407 (1958) ... 427
  - Sec. 6 ... 411
  - Sec. 7 ... 411
- Clayton Act, 38 Stat. 730 (1914), 15 U.S.C. 14 (1958):
  - Sec. 2(a) ... 282
- Federal Power Act, 49 Stat. 838 (1935), 16 U.S.C. 791 (1958):
  - Sec. 3(7) ... 594, 596, 611, 1027
  - Sec. 3(8) ... 291, 1016
  - Sec. 3(11) ... 414, 453, 652, 1309
  - Sec. 4 ... 33, 850, 1132
  - Sec. 4(a) ... 40
  - Sec. 4(b) ... 5, 7, 9, 277, 320, 334, 336, 339, 342, 398, 400, 402, 405, 419, 530, 594, 597, 611, 803, 805, 850, 1309
  - Sec. 4(e) ... 3, 6, 8, 71, 171, 234, 278, 291, 319, 321, 332, 335, 337, 340, 396, 399, 402, 403, 413, 417, 429, 526, 530, 593, 596, 610, 662, 670, 706, 801, 804, 848, 895, 962, 988, 1016, 1021, 1067, 1106, 1126, 1127, 1308
  - Sec. 4(f) ... 408, 521, 932, 934
  - Sec. 5 ... 644, 935, 1311
  - Sec. 6 ... 5, 7, 9, 75, 297, 320, 324, 336, 339, 342, 398, 400, 402, 405, 419, 530, 594, 597, 611, 803, 805, 850, 876, 977, 1076, 1125, 1145, 1309
  - Sec. 7(b) ... 409, 522, 932, 936
  - Sec. 8 ... 652, 845, 977
  - Sec. 9 ... 33, 409, 522, 932, 937
  - Sec. 9(a) ... 458
  - Sec. 10 ... 33, 1132
  - Sec. 10(a) ... 434, 963, 968, 977, 1106, 1309
  - Sec. 10(c) ... 5, 7, 9, 277, 320, 334, 336, 339, 342, 398, 400, 402, 405, 419, 530, 594, 597, 611, 803, 805, 850, 1309
  - Sec. 10(d) ... 5, 7, 9, 277, 320, 334, 336, 339, 342, 398, 400, 402, 405, 419, 530, 594, 597, 611, 803, 805, 850, 1309
  - Sec. 10(e) ... 495, 647, 1027
  - Sec. 10(f) ... 5, 7, 9, 186, 194, 201, 300, 320, 334, 336, 339, 342, 398, 400, 402, 405, 416, 419, 530, 594, 597, 611, 664, 803, 805, 850, 907, 911, 1290, 1309
  - Sec. 10(g) ... 278
  - Sec. 10(i) ... 5, 7, 9, 275, 320, 334, 336, 339, 342, 398, 400, 402, 405, 419, 530, 594, 597, 611, 803, 805, 850, 963, 1126, 1309
  - Sec. 11 ... 402, 419, 530, 1309

United States—Continued
Federal Power Act—Continued Page
Sec. 12 402, 419, 530, 1309
Sec. 14 5, 7, 9, 275, 319, 333, 335, 338, 341, 397, 399, 401, 404, 418, 529, 849, 1309
Sec. 15 5, 7, 9, 276, 319, 333, 335, 338, 341, 397, 399, 401, 404, 418, 529, 594, 597, 611, 803, 805, 849, 1309
Sec. 17(b) 201, 1291
Sec. 18 1309
Sec. 19 5, 7, 9, 320, 334, 336, 339, 342, 398, 400, 402, 405, 419, 530, 594, 597, 611, 803, 805, 850, 1309
Sec. 20 5, 7, 9, 320, 334, 336, 339, 342, 398, 400, 402, 405, 419, 530, 594, 597, 611, 803, 805, 850, 1309
Sec. 22 5, 7, 9, 320, 334, 336, 339, 342, 398, 400, 402, 405, 419, 530, 594, 597, 611, 803, 805, 850, 1309
Sec. 23(a) 5, 7, 9, 234, 320, 334, 336, 339, 342, 398, 400, 402, 405, 419, 530, 594, 597, 611, 803, 805, 850, 1309
Sec. 23(b) 277, 291, 526, 586, 985, 1016
Sec. 24 801
Sec. 26 277
Sec. 201 110, 184, 315, 328, 386, 407, 689, 740
Sec. 201(a) 747
Sec. 201(b) 742, 1154
Sec. 201(d) 774
Sec. 201(e) 358, 742, 1154
Sec. 201(f) 757
Sec. 202 184, 407, 754
Sec. 202(a) 178, 983
Sec. 202(b) 303, 655
Sec. 202(e) 177
Sec. 202(f) 179
Sec. 203 208, 231, 318, 423, 649, 685, 687, 843, 942, 1041, 1148, 1157, 1186
Sec. 203(a) 1147
Sec. 203(b) 1155
Sec. 204 76, 78, 718, 939, 974, 991, 1040, 1207, 1255
Sec. 204(a) 719, 1257
Sec. 204(e) 719, 1257
Sec. 204(f) 77, 79, 650, 719, 941, 975, 1040, 1257
Sec. 205 109, 174, 183, 221, 303, 314, 344, 406, 742, 931, 955, 1135
Sec. 205(b) 359
Sec. 205(d) 110, 177, 751
Sec. 206 109, 183, 303, 314, 344, 406, 655, 742, 955, 1135
Sec. 206(a) 366
Sec. 208 329
Sec. 301 184, 329, 407, 779, 955
Sec. 301(b) 329
Sec. 304 40, 570, 955
Sec. 305(b) 1006
Sec. 306 184, 407, 757, 1135
Sec. 307 184, 329, 407, 750, 955, 1135
Sec. 307(b) 780
Sec. 308 110, 184, 329, 407, 457, 649, 1135
Sec. 308(a) 689
Sec. 309 33, 40, 110, 184, 202, 329, 407, 570, 955, 1132, 1135
Sec. 311 40, 570, 983
Sec. 313 278, 714, 977
Sec. 313(a) 5, 7, 10, 52, 75, 172, 275, 281, 295, 299, 321, 326, 335, 340, 342, 398, 401, 403, 406, 410, 416, 420, 458, 523, 529, 531, 572, 595, 598, 612, 653, 664, 674, 709, 714, 757, 804, 808, 845, 851, 884, 899, 934, 963, 977, 978, 1019, 1025, 1071, 1126, 1126, 1130, 1146, 1270, 1310

United States—Continued
  Federal Power Act—Continued Page
    Sec. 313(c) 969
  Flood Control Act of 1936, 49 Stat. 1570 935
  Flood Control Act of 1944, 58 Stat. 887 1284
    Sec. 5 217, 930
  General Dam Act of 1906, 34 Stat. 386, as amended June 23, 1910, 36 Stat 593 584, 985
    Sec. 1 986
    Sec. 4 987
    Sec. 6 986
  Indian Reorganization Act of June 18, 1934, 48 Stat. 984:
    Sec. 16 647
  Internal Revenue Code of 1954, 68A Stat. 3, 26 U.S.C. 1 (1958):
    Sec. 38 381
    Sec. 46(c)(3)(B) 381
    Sec. 48(g) 381
  Internal Revenue Code, 26 U.S.C. 1:
    Sec. 167 354, 575, 1278
    Sec. 168 354
  Natural Gas Act, 52 Stat. 821 (1938), 15 U.S.C. 717 (1958):
    Sec. 1 548
    Sec. 1(b) 247
    Sec. 1(c) 247, 899, 1138
    Sec. 2 242
    Sec. 2(1) 900, 1020
    Sec. 3 142, 180, 640, 702, 899, 1020
    Sec. 4 30, 114, 154, 241, 287, 309, 548, 575, 605, 629, 637, 683, 868, 888, 1085, 1225, 1250, 1292
    Sec. 4(a) 667, 1085
    Sec. 4(b) 289, 667, 1085
    Sec. 4(c) 1086
    Sec. 4(d) 1086
    Sec. 4(e) 23, 106, 129, 233, 305, 829, 1098, 1215, 1279
    Sec. 5 30, 165, 241, 284, 548, 667, 683, 723, 929, 1085, 1204
    Sec. 5(a) 88, 155, 205, 262, 284, 374, 536, 819, 1081, 1280
    Sec. 7 55, 92, 106, 131, 146, 154, 205, 214, 216, 235, 238, 242, 287, 502, 546, 617, 625, 643, 683, 866, 959, 1075, 1172, 1234, 1262, 1287
    Sec. 7(a) 24, 80, 116, 185, 190, 210, 211, 225, 228, 311, 327, 538, 606, 678, 679, 681, 716, 721, 809, 840, 841, 846, 851, 913, 914, 948, 953, 957, 971, 998, 1002, 1033, 1036, 1038, 1043, 1191, 1195, 1197, 1198, 1201, 1216, 1217, 1257, 1259, 1300
    Sec. 7(b) 48, 49, 56, 86, 90, 96, 127, 198, 217, 524, 525, 591, 606, 614, 637, 726, 738, 798, 817, 868, 870, 905, 951, 1045, 1052, 1059, 1137, 1142, 1194, 1220, 1270
    Sec. 7(c) 1, 10, 11, 13, 16, 20, 21, 25, 28, 34, 36, 41, 49, 53, 56, 56, 58, 60, 62, 63, 65, 66, 68, 70, 85, 86, 90, 93, 96, 97, 102, 104, 106, 117, 120, 122, 124, 133, 151, 173, 192, 193, 196, 198, 214, 216, 227, 230, 235, 239, 282, 310, 331, 424, 425, 506, 517, 519, 532, 540, 543, 549, 562, 565, 566, 567, 573, 588, 598, 600, 602, 604, 608, 614, 617, 623, 636, 645, 655, 657, 659, 665, 667, 677, 702, 704, 727, 738, 796, 811, 812, 813, 815, 818, 821, 823, 825, 847, 861, 863, 864, 868, 870, 871, 873, 875, 889, 905, 913, 945, 949, 952, 956, 960, 972, 980, 982, 989, 992, 993, 995, 997, 1000, 1003, 1005, 1007, 1009, 1011, 1030, 1032, 1034, 1047, 1050, 1053, 1055, 1056, 1058, 1060, 1062, 1071, 1072, 1137, 1139, 1141, 1142, 1164, 1192, 1200, 1203, 1205, 1209, 1210, 1219, 1220, 1222, 1223, 1225, 1227, 1250, 1251, 1254, 1295, 1298, 1300, 1302, 1304, 1305
    Sec. 7(e) 2, 11, 12, 14, 17, 20, 22, 25, 29, 35, 37, 42, 50, 54, 56, 57, 59, 61, 62, 64, 65, 67, 69, 71, 85, 87, 91, 93, 96, 98, 103, 105, 118, 121, 122, 125, 157, 192, 197, 200, 215, 216, 228, 230, 236, 239, 310, 332, 425, 426, 506, 518, 520, 533, 541, 544, 550, 563, 565, 566,

United States—Continued
  Natural Gas Act—Continued
    Sec. 7(e)—Continued Page
      568, 574, 589, 599, 601, 603, 604, 609, 618, 622, 636, 646, 656, 658, 660, 665, 668, 705, 727, 738, 798, 811, 813, 814, 816, 818, 824, 826, 848, 862, 863, 865, 868, 871, 872, 874, 875, 890, 906, 928, 947, 950, 953, 956, 961, 973, 981, 982, 990, 993, 994, 995, 998, 1001, 1004, 1005, 1008, 1010, 1012, 1031, 1032, 1036, 1048, 1051, 1053, 1056, 1057, 1058, 1061, 1062, 1072, 1073, 1139, 1142, 1144, 1171, 1193, 1201, 1204, 1206, 1210, 1211, 1219, 1221, 1223, 1224, 1226, 1228, 1233, 1252, 1255, 1297, 1298, 1301, 1303, 1305, 1306
    Sec. 10 40, 667, 929, 1289
    Sec. 14 422, 667, 929, 1233
    Sec. 15 284, 309, 667, 888, 929
    Sec. 15(a) 143
    Sec. 16 40, 144, 284, 614, 640, 667, 683, 888, 929, 959, 959, 1075, 1289
    Sec. 19 534
    Sec. 19(a) 615, 886
    Sec. 19(b) 534, 1190
  Outer Continental Shelf Lands Act, 67 Stat. 462:
    Sec. 4(b) 144
    Sec. 5 146, 617
    Sec. 5(c) 144, 615, 959
  Public Law 85–159, 71 Stat. 401 1145
  Public Law 85–850, 72 Stat. 1090 936
  Public Law 88–272, 78 Stat. 19:
    Sec. 203(e) 381
  Public Utility Holding Company Act of 1935, 49 Stat. 803 163, 1148
    Sec. 9 1148
    Sec. 11 1148
  Reorganization Act of 1945, 59 Stat. 613:
    Sec. 2(a) 163
  River and Harbor Act of 1899, 33 Stat. 401 987
  River and Harbor Act of 1945, 59 Stat. 10 411
  Robinson-Patman Act, 49 Stat. 1526 (1936), 15 U.S.C. 13(a) (1958) 282
  Rural Electrification Act of 1936, 49 Stat. 1363, 7 U.S.C. 901 347, 365
  Small Business Act of 1958, 72 Stat. 689 235
States:
  Wisconsin, Laws of, 1911, ch. 640, as amended 186
  Wisconsin, Laws of, 1913, ch. 759 186
  Wisconsin, Laws of, 1921, ch. 339 186

TABLE OF RULES OF COMMISSION CITED*

	Page
Sec. 1.6(d)	761
Sec. 1.7	1133
Sec. 1.7(c)	728
Sec. 1.8	113, 142, 180, 184, 285, 309, 330, 408, 888, 955, 1262
Sec. 1.8(b)	143
Sec. 1.8(d)	715
Sec. 1.9(a)	535
Sec. 1.9(c)	985
Sec. 1.10	1262
Sec. 1.11(d)	676
Sec. 1.12	81, 88
Sec. 1.17	587
Sec. 1.18	115, 284, 309, 888
Sec. 1.18(e)	315, 637, 715, 799, 820, 827, 1048, 1212, 1274
Sec. 1.27	836
Sec. 1.28(a)	299, 1045
Sec. 1.30	939, 1082
Sec. 1.30(c)	243, 576
Sec. 1.30(c)(1)	607
Sec. 1.30(d)(2)	913
Sec. 1.30(e)	81, 88, 198
Sec. 1.30(j)	836
Sec. 1.31	939
Sec. 1.31(a)	689
Sec. 1.32	243
Sec. 1.34	305, 534, 587, 615, 654, 886, 1190, 1205, 1263
Sec. 1.36(d)(7)	1288
Sec. 1.36(e)	1288
Sec. 1.37	113, 180, 184, 330, 408, 955
Sec. 1.37(f)	285, 309, 888
Sec. 2.55(d)	1009
Sec. 2.56	1275
Sec. 2.56(a)	1191, 1235
Sec. 2.56(d)	1191
Sec. 2.57	1261
Sec. 2.59(h)	283
Sec. 3.4(e)(6)	836
Sec. 4.41	32, 410, 451, 523, 672, 707, 878, 934, 939, 1017, 1070
Sec. 4.42	34
Sec. 4.50	278, 319, 333, 336, 338, 341, 397, 399, 401, 404, 418, 529, 849
Sec. 6.2	277
Sec. 6.4	277
Sec. 8.1	1132
Sec. 8.2	1132
Sec. 8.2(a)	1132
Sec. 8.2(b)	1132
Sec. 9.3	652, 845, 978
Sec. 11.27(a)	908, 977
Sec. 11.27(b)	909
Sec. 11.31	201, 411
Sec. 11.31(e)	540, 1026, 1291
Sec. 13.1	186, 194, 302, 416, 664, 908, 1290
Sec. 34.1a	719, 975, 991, 1041, 1257
Sec. 34.1a(a)(1)	975, 991, 1041

---

* The Commission's Rules and Regulations are contained in Title 18, Chapter I, of the Code of Federal Regulations.

Sec. 34.1a(a)(2)	719, 1257
Sec. 34.1a(a)(4)	76
Sec. 34.1a(b)	47, 76, 939, 975
Sec. 34.1a(c)	76, 975
Sec. 34.2(f)(2)	974
Sec. 34.2(g)	79, 108, 941, 1029
Sec. 34.2(h)	79, 108
Sec. 34.2(h)(1)	942, 1029
Sec. 34.2(k)(2)(ii)	76
Sec. 34.9	80, 108, 942, 1029
Sec. 35	109, 751, 1135
Sec. 35.1	303
Sec. 35.3	303, 1135
Sec. 35.3(a)	796
Sec. 35.3(c)	751
Sec. 35.11	1134
Sec. 35.12	112
Sec. 35.13	112
Sec. 35.13(b)(iv)	955
Sec. 35.15	303
Sec. 101	329
Sec. 131.6	275
Sec. 141.1(b)	569, 701
Sec. 141.1(c)	701
Sec. 153.8	703, 900
Sec. 154	32, 103, 274, 307, 313, 538, 543, 605, 632, 637, 639, 739, 800, 868, 954, 1003, 1028, 1034, 1039, 1050, 1095, 1214, 1250
Sec. 154.63(f)	667, 929
Sec. 154.82	1095
Sec. 154.85	1079
Sec. 154.91(b)	620
Sec. 154.93	84
Sec. 154.94(b)	30, 632
Sec. 154.94(f)	30, 632
Sec. 155	815, 1289
Sec. 155.1	1286
Sec. 155.1(a)	1288
Sec. 155.1(b)	1289
Sec. 155.1(c)	1288
Sec. 155.1(d)	1288
Sec. 157	605, 637, 868, 959
Sec. 157.5	553
Sec. 157.7(b)	543, 566, 815, 1008, 1009, 1062, 1219
Sec. 157.7(b)(1)(i)	1062
Sec. 157.7(b)(1)(ii)	1062
Sec. 157.7(b)(3)	17, 21, 59, 61, 63, 69, 122, 544, 567, 668, 816, 862, 1008, 1010, 1053, 1063, 1201, 1219
Sec. 157.7(c)	588, 872, 1011, 1064, 1075
Sec. 157.7(c)(1)	1011
Sec. 157.7(c)(1)(i)	1073
Sec. 157.7(c)(1)(ii)	1064, 1075
Sec. 157.7(c)(7)	58, 590, 873, 1074
Sec. 157.7(c)(7)(ii)	505
Sec. 157.7(c)(8)	58, 66, 68, 590, 873, 996, 1012, 1073
Sec. 157.7(c)(9)	57, 1011
Sec. 157.7(d)	602
Sec. 157.7(d)(1)	22, 603
Sec. 157.7(d)(2)	22, 603
Sec. 157.7(d)(3)	22, 603
Sec. 157.7(d)(4)	22, 603
Sec. 157.7(d)(5)	22, 603
Sec. 157.7(d)(6)	22, 603
Sec. 157.7(d)(7)	22, 603
Sec. 157.11	143
Sec. 157.14(a)(6)	614
Sec. 157.14(a)(11)	547
Sec. 157.14(a)(11)(iv)	553

Sec. 157.14(a)(11)(v) 553
Sec. 157.14(a)(11)(vii) 553
Sec. 157.14(a)(16) 254, 561
Sec. 157.14(a)(18) 561
Sec. 157.18 614
Sec. 157.20 2, 11, 13, 14, 17, 21, 22, 26, 35, 38, 42, 50, 54, 56, 57, 59, 61, 63, 64, 66, 67, 69, 71, 86, 87, 91, 93, 96, 98, 103, 105, 118, 121, 123, 125, 157, 192, 194, 197, 200, 215, 217, 228, 230, 236, 274, 310, 332, 425, 426, 506, 518, 520, 533, 541, 544, 549, 563, 565, 567, 569, 574, 589, 599, 601, 603, 605, 609, 618, 646, 657, 659, 660, 666, 668, 706, 728, 731, 738, 798, 812, 813, 815, 816, 825, 826, 848, 862, 864, 865, 871, 872, 874, 876, 890, 906, 928, 947, 950, 953, 956, 961, 973, 981, 982, 990, 993. 994, 996, 998, 1001, 1004, 1005, 1008, 1010, 1012, 1031, 1033, 1036, 1048, 1051, 1054, 1056, 1057, 1059, 1061, 1063, 1072, 1073, 1139, 1142, 1144, 1171, 1194, 1201, 1204, 1206, 1210, 1211, 1220, 1222, 1223, 1225, 1228, 1252, 1255, 1297, 1299, 1301, 1303, 1305, 1306
Sec. 157.22 810
Sec. 157.23 958
Sec. 157.23(a) 959
Sec. 157.23(b) 959
Sec. 157.28 683
Sec. 157.30 959
Sec. 260 1289
Sec. 260.1(a) 1290
Sec. 260.1(c) 1290

TABLE OF MISCELLANEOUS CITATIONS

Page
56 Am. Jur., Waiver, § 17 1084
Bonbright, James C., Principles of Public Utility Rates, p. 384 350
Congressional Record:
  Vol. 42, p. 4698 (1908) (President Roosevelt's veto of the Rainy River Bill) 585, 986
  Vol. 44, pp. 4821–23 (1909) 987
  Vol. 45, p. 5683 (1910) 585
Executive Order No. 10485, September 3, 1953 .... 143, 178
Executive Order No. 11007, February 26, 1962 983
Federal Power Commission 2d Annual Report (1922), p. 151 526
Federal Power Commission 43rd Annual Report (1963), p. 126 1249
Federal Power Commission National Power Survey Report (1962):
  pp. 69–70 430
  p. 123 440
  p. 124 442
Journal of Commerce and Commercial, a daily circulated in New York City, January 28, 1964 266
Kintner, "Discovery in Administrative Adjudicative Proceedings", 16 Adm. L. Rev., pp. 233–42 (1964) 782
Order No. 260–A, 29 FPC 777 451
Order No. 292, 33 FPC 32 451
Sporn, Philip, "The Integrated Power System" (1950) 768
Statement of General Policy No. 61–1, 24 FPC 818 .... 29, 37, 260, 290, 422, 530, 542, 629, 650, 657, 682, 711, 809, 1049, 1206, 1234, 1267, 1269, 1274, 1275, 1279, 1303, 1356, 1505
Statement of General Policy No. 61–1, 1st Amendment, 24 FPC 902 290
Statement of General Policy No. 61–1, 2d Amendment, 24 FPC 1107, as amended by Order No. 264, 29 FPC 589 .... 31, 316, 716, 800, 1267
Statement of General Policy No. 61–1, 7th Amendment, 30 FPC 1370 82
Statement of General Policy No. 61–1, 9th Amendment, 32 FPC 422 82
Statement of General Policy No. 61–1, 10th Amendment, 33 FPC 682 .... 682, 1190
The Forum, published by the District of Columbia Chapter of the Federal Bar Association, December, 1963 782
Uniform System of Accounts, Instruction 3(13) 987
United States of America treaty with Canada on use of Niagara River water, February 27, 1950, Article II 1145
United States House of Representatives:
  Hearings, Subcommittee of the Committee on Interstate and Foreign Commerce Committee on H.R. 2972, 80th Cong., 1st Sess. (1947) 749
  Hearings, Subcommittee of the Committee on Interstate and Foreign Commerce Committee on H.R. 2973, 80th Cong., 1st Sess. (1947) 778
  House Document No. 68, 74th Cong., 1st Sess. (1935) 935
  House Document No. 207, 80th Cong., 1st Sess. (1947) 1127
United States Senate:
  Senate Report No. 597, Committee on Interstate and Foreign Commerce, 63rd Cong., 2d Sess. (1914), pp. 10–11 46
  Senate Report No. 817, 83rd Cong., 2d Sess. (1954) 247
Wall Street Journal, August 26, 1964 558

FOREWORD

The Federal Power Act was originally enacted as the Federal Water Power Act, approved June 10, 1920 (41 Stat. 1063, 16 U.S.C. 791–823). The Federal Power Commission was reorganized January 1, 1931, as an independent Commission under the act approved June 23, 1930 (46 Stat. 797). By Title II of the Public Utility Act of 1935, approved August 26, 1935 (49 Stat. 838), the original Federal Water Power Act was made part I of the "Federal Power Act" and parts II and III were added. The Federal Power Act was amended May 28, 1948 (62 Stat. 275), August 7, 1953 (67 Stat. 461), August 15, 1953 (67 Stat. 587), June 4, 1956 (70 Stat. 226), and August 28, 1958 (72 Stat. 941 at 947). The Commission also administers the Natural Gas Act, approved June 21, 1938 (52 Stat. 821, 15 U.S.C. 717–717w), as amended February 7, 1942 (56 Stat. 83, 15 U.S.C. 717f), July 25, 1947 (61 Stat. 459, 15 U.S.C. 717f), March 27, 1954 (68 Stat. 36, 15 U.S.C. 717(c)), and August 28, 1958 (72 Stat. 941 at 947, 15 U.S.C. 717r), and has certain duties under the Tennessee Valley Authority Act, approved May 18, 1933 (48 Stat. 1075), and amendments thereto; the Bonneville Act, approved August 20, 1937 (50 Stat. 731); the Fort Peck Act, approved May 18, 1938 (52 Stat. 403); and under various Flood Control and River and Harbor Acts (notably the Flood Control Act of 1944, approved December 22, 1944 (58 Stat. 887)), and other statutes, as well as Executive Orders.

This volume, the thirty-third of a series, contains all the formal opinions and accompanying orders of the Federal Power Commission rendered, January 1, 1965 to June 30, 1965, inclusive. In addition to the formal opinions, there have been included intermediate decisions which have become final and selected orders of the Commission issued during such period.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross and David S. Black.

ALABAMA-TENNESSEE NATURAL GAS COMPANY, DOCKET NO. CP64-190

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 4, 1965)

On February 27, 1964, as amended on August 21 and October 27, 1964, Alabama-Tennessee Natural Gas Company (Applicant) filed in Docket No. CP64-190 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities and the sale, transportation and delivery of additional volumes of natural gas to existing customers, all as more fully set forth in the application, as amended, in this proceeding.

Specifically, Applicant proposes to construct and operate approximately 6.5 miles of 12-inch pipeline paralleling and looping Applicant's existing mainline in Colbert County and approximately 2.2 miles of 12-inch pipeline paralleling and looping Applicant's existing Tennessee River crossing in Morgan and Limestone Counties, all in the State of Alabama. The proposed facilities will increase Applicant's daily system delivery capacity by 6,010 Mcf, Applicant's presently authorized daily delivery capacity is 99,680 Mcf.

The total estimated cost of the subject facilities is $621,000, which cost will be financed by funds from internal sources and short-term bank loans.

Applicant states that the subject project will provide the capacity to deliver the additional supply of natural gas required by Applicant's customers during the winter of 1964–65 and to render such increased service on a long-term basis. Applicant's allocation of total authorized and proposed capacity is set forth in the attached appendix.

Applicant will obtain the gas supply necessary to meet the proposed increased sales from Tennessee Gas Transmission Company.

By letters dated July 9 and November 5, 1964, Applicant was issued temporary certificates authorizing the subject project.

On June 23, 1964, the City of Florence, Alabama, filed a protest to the subject application as originally filed. In the original application it was stated that Applicant would render additional service required by Florence provided the latter executed a precedent agreement for its total purchases for a period extending to November 1, 1983, the termination date of Applicant's present service agreement with its supplier, Tennessee Gas Transmission Company. By its protest of June 23, 1964, Florence objected to this provision, stating that it would not accede to Applicant's condition that Florence agrees to extending the term of all of its purchases, including the increase proposed in this docket, from 1971, the termination of the present service agreement, to 1983. In its amendment filed herein on August 21, 1964, Applicant states, among other things, that it and Florence have negotiated a precedent agreement wherein they have agreed to execute service agreements whereby Florence's obligation to purchase its gas requirements will terminate as to certain volumes in 1971 and as to other volumes in 1983. Said amendment contains as one of its exhibits a copy of the new precedent agreement.

In light of the new precedent agreement between Applicant and Florence, it appears that the two parties have resolved their differences; therefore, the Commission need not take any action upon the protest of Florence.

After due notice, no petition to intervene, notice of intervention or other protest to the granting of the application has been filed.

At a hearing held on December 30, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, amendments and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Alabama-Tennessee Natural Gas Company, a Delaware corporation having its principal place of business in Florence, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued July 2, 1948, in Docket No. G-585 (7 FPC 257).

(2) The facilities hereinbefore described, as more fully described in the application, as amended, in this proceeding, are to be used in the sale and/or transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed sales and/or transportation of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed sales and/or transportation of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c) (4) and (e) of Section 157.20 of such Regulations.

(6) This certificate should not entitle the industrial customer to whom additional firm deliveries are authorized herein to any priorities or rights to additional gas for meeting any future increases in its requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Alabama-Tennessee Natural Gas Company, to construct and operate the proposed facilities and to sell and/or transport natural gas as hereinbefore described, all as more fully described in the application, as amended, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c) (4) and (e) of Section 157.20 of such Regulations.

(C) This certificate shall not entitle the industrial customer to whom additional firm deliveries are authorized herein to any priorities or rights to additional gas for meeting any future increases in its requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

APPENDIX

ALABAMA-TENNESSEE NATURAL GAS COMPANY

ALLOCATION OF TOTAL AUTHORIZED AND PROPOSED CAPACITY IN DOCKET NO. CP64-190

	Allocated authorized and proposed capacity—Mcf
Jurisdictional customers:	
Athens, City of	2,000
Cherokee, Town of	350
Corinth, City of	4,500
Decatur, City of	9,555
Florence, City of	11,015
Hardin County Gas Co	180
Hartselle, City of	1,550
Huntsville, City of	36,830
Iuka, Town of	885
Lawrence-Colbert Co's Gas District	965
Muscle Shoals Nat. Gas Corp	3,975
Russellville, City of	1,550
Selmer, Town of	1,210
Sheffield, City of	5,020
Tuscumbia, City of	4,955
Total jurisdictional	84,540
Nonjurisdictional customers:	
Reynolds Metals Company	12,000
Tennessee Valley Authority	5,000
Ford Motor Company	1,800
Total nonjurisdictional	18,800
Company Use	750
Prospective Customers	1,600
Total Allocated Authorized Capacity	105,690

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

MAINE PUBLIC SERVICE COMPANY, PROJECT NO. 2366

ORDER ISSUING LICENSE (MINOR)

(Issued January 4, 1965)

Application was filed on May 13, 1963, by Maine Public Service Company (Applicant) of Presque Isle, Maine, for a license under Section 4(e) of the Federal Power Act (Act) for constructed Project No. 2366, known as the Millinocket Lake Dam, located on Millinocket Stream in Piscataquis County, Maine.

Construction of the project commenced in 1942 and it was put into use in 1943. Although there is no power installation at the project site, the storage created by the project dam and reservoir is utilized to generate hydroelectric energy at Applicant's Caribou development (Project No. 2367) located 92 miles downstream on the Aroostook River and at Applicant's Tinker Development in New Brunswick, Canada, located 108 miles downstream on the same river. No lands of the United States are affected by the project.

The Millinocket Reservoir is formed by Millinocket Lake Dam at mile 7 on Millinocket Stream, a headwater tributary to the Aroostook River. The Millinocket and Munsungan Streams join to form the Aroostook River at about mile 105 on the latter river. The usable storage capacity of the project reservoir is 16,100 acre-feet derived from a drainage area of 70 square miles which results in an estimated runoff of about 1.8 cfs per mile. The discharge capacity of Millinocket Reservoir is 1,767 cfs at an elevation of 755.6 feet. During the month of February, 1960, Applicant released from Millinocket Reservoir storage an average discharge equivalent to 213 cfs. This resulted in an increased river stage at the Masardis gage, located 40 miles downstream, averaging one-half foot during February, 1960.

According to the available records, the Aroostook River has been used throughout its length since the early lumbering days for boat navigation, the floating of pulpwood and logs and the rafting of logs into New Brunswick, Canada, and down the St. John's River.

The Secretary of the Army and the Corps of Engineers have reported that the plans of the project structures affecting navigation are satisfactory insofar as the interests of navigation are concerned.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project certain conditions for the conservation and development of fish and wildlife resources.

The Department of Health, Education, and Welfare has advised that the project does not have any adverse affects on water quality.

In accordance with the criteria set forth in our April 25, 1962 Opinion No. 357 (27 FPC 830), the license herein granted shall be for a period of 50 years, effective as of July 1, 1942, since neither a declaration of intention nor a timely application for license was filed with respect to the construction of the project in 1942.

The Commission finds:

(1) The Aroostook River from the confluence of the Millinocket and Munsungan streams to the International boundary is a navigable waterway of the United States.

(2) The Millinocket Reservoir affects navigable waters of the United States.

(3) Applicant is a corporation organized under the laws of the State of Maine, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(4) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(5) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(6) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the

improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(7) The amount of annual charges to be paid under the license for the purpose of reimbursing the United States for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(8) It will be in the public interest to waive pursuant to Section 10(i) of the Act the terms and conditions contained in the following sections of Part I of the Act:

> Section 4(b), except the second sentence thereof; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 14, except insofar as the power of condemnation is reserved; 15; 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

The Commission orders:

(A) This license is hereby issued to Maine Public Service Company (Licensee) of Presque Isle, Maine, under Sections 4(e) and 10(i) of the Act, for a period of 50 years, effective as of July 1, 1942, for the continued operation and maintenance of Project No. 2366, located on Millinocket Stream, and affecting navigable waters of the United States; subject to the terms and conditions of the Act not expressly waived herein, which Act is hereby incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2366 consists of:

> (i) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined.
>
> (ii) A rock-filled timber crib dam at the outlet of Millinocket Lake, 11 feet high and 228 feet long, a fishway, gated section, and all other structures, fixtures, equipment or facilities used or useful in the operation and maintenance of the project and located on the project area; and all rights and interests therein, the possession of which is necessary in the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-9 (July 1, 1964) entitled "Terms and Conditions of License for Constructed Minor Project Affecting Navigable Waters of the United States" (32 FPC 577), which terms and conditions, designated as Articles 1 through 11, are attached hereto and made a part hereof; and subject to the following special condition set forth herein as an additional article:

Article 12. The Licensee shall pay to the United States the following annual charge:

> (i) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, $5.00, effective as of July 1, 1942.

(D) The terms and conditions of the Act, which it has been found above to be in the public interest to waive, are hereby excluded from this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

MAINE PUBLIC SERVICE COMPANY, PROJECT NO. 2367

ORDER ISSUING LICENSE (MINOR)

(Issued January 4, 1965)

Application was filed on May 13, 1963, by Maine Public Service Company (Applicant) of Presque Isle, Maine, for a license under Section 4(e) of the Federal Power Act (Act) for constructed Project No. 2367, known as the Caribou Hydraulic Plant, located on the Aroostook River, in the Township of Caribou, in Aroostook County, Maine.

The project was originally constructed in 1895 in conjunction with a sawmill and was rebuilt in 1927 when the present power plant was installed. No lands of the United States are affected by the project.

The Caribou Hydraulic Plant is located at mile 21 on the Aroostook River. In our order of even date pertaining to Applicant's Project No. 2366 located on Millinook Stream, a headwater tributary of the Aroostook River, we found that the Aroostook River from the confluence of the Millinocket and Munsungan streams to the International boundary is a navigable waterway of the United States.

The Secretary of the Army and the Corps of Engineers have reported that the plans of the project structures affecting navigation are satisfactory insofar as the interests of navigation are concerned.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project certain conditions for the conservation and development of fish and wildlife resources.

The Department of Health, Education, and Welfare has advised that the project does not constitute a source of pollution and removal of the dam of flow regulation is not warranted at this time, and the granting of a license for the project will not create or intensify vector problems.

In accordance with the criteria set forth in our April 25, 1962 Opinion No. 357 (27 FPC 830), the license herein granted shall be for a period effective as of April 1, 1962 and terminating December 31, 1993.

The Commission finds:

(1) The Caribou Hydraulic Plant affects navigable waters of the United States.

(2) Applicant is a corporation organized under the laws of the State of Maine, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 1,070 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(7) It will be in the public interest to waive pursuant to Section 10(i) of the Act the terms and conditions contained in the following sections of Part I of the Act:

> Section 4(b), except the second sentence thereof; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 14, except insofar as the power of condemnation is reserved; 15; 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

The Commission orders:

(A) This license is hereby issued to Maine Public Service Company (Licensee) under Sections 4(e) and 10(i) of the Act, for a period effective as of April 1, 1962, and terminating December 31, 1993, for the continued operation and maintenance of Project No. 2367, located on the Aroostook River, a navigable water of the United States, subject to the terms and conditions of the Act not expressly waived herein, which Act is hereby incorporated herein by reference as a part of this license and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2367 consists of:

> (i) all lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined.
>
> (ii) a rock-filled timber crib dam with concrete cap, 14 feet high and 450 feet long; and a powerhouse of brick and concrete construction containing two water-wheels of 535 horsepower each, and two 400 kw capacity generators; and all other structures, fixtures, equipment or facilities used or useful in the operation and maintenance of the project and located on the project area; and all rights and interests therein, the possession of which is necessary in the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-9 (July 1, 1964) entitled "Terms and Conditions of License for Constructed Minor Project Affecting Navigable Waters of the United States" (32 FPC 577), which terms and conditions, designated as Articles 1 through 11, are attached hereto and made a part hereof; and subject to the following special condition set forth herein as an additional article:

Article 12. The Licensee shall pay to the United States the following annual charge, effective as of April 1, 1962:

> (i) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, $53.00.

(D) The terms and conditions of the Act, which it has been found above to be in the public interest to waive, are hereby excluded from this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

MAINE PUBLIC SERVICE COMPANY, PROJECT NO. 2368

ORDER ISSUING LICENSE (MINOR)

(Issued January 4, 1965)

Application was filed on May 13, 1963, by Maine Public Service Company (Applicant) of Presque Isle, Maine, under Section 4(e) of the Federal Power Act (Act) for a license for constructed minor Project No. 2368, known as the Squa Pan Plant, located on the headwaters of Squa Pan Stream in the Township of Masardis, in Aroostook County, Maine. No lands of the United States are affected by the project.

The project reinforced concrete dam was built in 1927 and 1928 with a height of 35 feet and a length of 60 feet. Earth embankments of the same height extend the length on both sides of the dam. The dam contains a spillway 23 feet in length and a brick and concrete powerhouse in which a power plant, designed for a 30 foot head, was installed in 1941 with a name plate rating of 1,500 kilowatts. The top of the dam corresponds to an elevation of 607 feet. The forebay elevation is 602 feet and the tailrace elevation is 575.5 feet when the plant is operating and 571.75 feet when the plant is closed. A usable storage capacity of 58,600 acre-feet is provided for between elevations 586 and 602 feet. As with Applicant's Millinocket Reservoir on Millinocket Stream (Project No. 2366), the Squa Pan Reservoir is used mainly for the storage of water to be used at Applicant's Caribou Development (Project No. 2367) located 53 miles downstream on the Aroostook River, and at Applicant's Tinker development in New Brunswick, Canada, located 70 miles downstream on the Aroostook River. The discharge capacity of the Squa Pan Plant is about 523 cfs. Applicant estimates that 1.75 billion cubic feet of water flow through the Squa Pan Plant annually which amounts to an average annual discharge of 55.5 cfs. The total drainage of the Squa Pan dam is about 70 square miles. At the Washburn gage (at mile 43 on the Aroostook River and 30 river miles downstream from Squa Pan Lake) during the month of February 1962, Applicant released from the Squa Pan Lake storage an average discharge equivalent to 362 cfs. This resulted in an increased river stage at Washburn amounting to an average increase of 4 inches during February, 1962.

In our order of even date pertaining to Applicant's Project No. 2366 on Millinocket Stream, a headwater tributary of the Aroostook River, we found that the Aroostook River from the confluence of the Millinocket and Munsungan streams to the International boundary is a navigable waterway of the United States.

The Secretary of the Army and the Corps of Engineers have reported that the plans of the project structures affecting navigation are satisfactory.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project, certain conditions for the conservation and development of fish and wildlife resources, and a condition providing for stream gaging.

The Department of Health, Education, and Welfare has advised that the project does not constitute a source of pollution and removal of the project dam or flow regulations is not warranted at this time, and that the granting of a license for the project would not create or intensify mosquito problems.

In accordance with the criteria set forth in our April 25, 1962 Opinion No. 357 (27 FPC 830), the license herein granted shall be for a period effective as of January 1, 1941 and terminating December 31, 1990.

The Commission finds:

(1) Squa Pan Lake affects navigable waters of the United States.

(2) Applicant is a corporation organized under the laws of the State of Maine, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 2,000 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(7) It will be in the public interest to waive pursuant to Section 10(i) of the Act the terms and conditions contained in the following sections of Part I of the Act:

> Section 4(b), except the second sentence thereof; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 14, except insofar as the power of condemnation is reserved; 15; 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

The Commission orders:

(A) This license is hereby issued to Maine Public Service Company (Licensee) under Sections 4(e) and 10(i) of the Act, for a period effective as of January 1, 1941, and terminating December 31, 1990, for the continued operation and maintenance of minor Project No. 2368, located on the headwaters of Squa Pan Stream, in Masardis, Aroostook County, Maine, and affecting navigable waters of the United States, subject to the terms and conditions of the Act not expressly waived herein, which Act is hereby incorporated herein by reference as a part of this license; and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2368 consists of:

> (i) all lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined.
>
> (ii) a reinforced concrete dam at the outlet of Squa Pan Lake, 35 feet high and 60 feet long; a brick and concrete powerhouse with a 2000 horsepower water wheel connected to a generator rated at 1500 kw; and all other

structures, fixtures, equipment or facilities used or useful in the operation and maintenance of the project and located on the project area; and all rights and interests therein, the possession of which is necessary in the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-9 (July 1, 1964) entitled "Terms and Conditions of License for Constructed Minor Project Affecting Navigable Waters of the United States" (32 FPC 577), which terms and conditions, designated as Articles 1 through 11, are attached hereto and made a part hereof; and subject to the following special condition set forth herein as an additional article:

Article 12. For the purpose of reimbursing the United States for the costs of administration of Part I of the Act the Licensee shall pay to the United States for the period January 1, 1941, through March 31, 1962, an annual charge of $5.00 and effective April 1, 1962, an annual charge of $100.00.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgement of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross and David S. Black.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP64-4

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 4, 1965)

On July 5, 1963, Tennessee Gas Transmission Company (Applicant), filed in Docket No. CP64-4, an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity, authorizing the construction and operation of facilities and the exchange of natural gas with McWood Corporation (McWood) at points on Applicant's lateral transmission lines in Southwestern Louisiana, and the operation and maintenance of metering facilities, all as more fully set forth in the application.

Applicant proposes to take a maximum of 1,500 Mcf of natural gas produced by McWood from the Creole Field in Cameron Parish, Louisiana, and deliver an equivalent volume to McWood at a point on its lateral transmission line (16-inch South Louisiana Bayou Sale Line) in Jefferson Davis Parish, Louisiana. Applicant has agreed to transport all of the natural gas, a distance of 40.6 miles for a monthly exchange charge of $490, consisting of a transportation charge of 1.51 cents per 100 miles, amounting to $280, plus a metering charge of $210.

McWood will construct, operate and maintain all facilities at the point of receipt of natural gas by Applicant, and Applicant will construct, operate and maintain facilities for the return of gas to McWood. The cost of construction of points of receipt and return will be borne by McWood.

The Commission on August 16, 1963, issued Applicant a temporary certificate authorizing the proposed facilities and service.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 30, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued July 15, 1947, in Docket No. G–910 (6 FPC 777).

(2) The proposed construction and operation of facilities and exchange of natural gas as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and exchange of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, Tennessee Gas Transmission Company, authorizing the construction and operation of facilities and exchange of natural gas as more fully described in the application and exhibits in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all the applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation and exchange of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within three months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP64–226

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 4, 1965)

On April 6, 1964, United Gas Pipe Line Company (Applicant) filed in Docket No. CP64–226 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to convert to interstate operation certain of its existing intrastate facilities, located in Duval, Jim Wells, San Patricio, Live Oak and Bee Counties, Texas, all as more fully set forth in the application in this proceeding.

Applicant proposes to convert to interstate operation its Bruni-Comal Line which consists of approximately 108.3 miles of 14-inch, 18-inch and 20-inch pipe and the tie cross-over between the Bruni-Comal Line and Pettus Junction which consists of approximately 3.7 miles of 16-inch pipe.

It appears that gas is presently transported in interstate commerce from Applicant's Southwest Zone to its Central Zone by means of its certificated Agua Dulce-Sterlington Line. At the present time gas flows from the San Antonio District to the Agua Dulce-Sterlington Line from several sources, two of them being Applicant's 18-inch Orange Grove-Agua Dulce Line and 18-inch Pettus-Refugio Line. Applicant proposes to connect the Bruni-Comal Line, together with the fields connected thereto, to the Agua Dulce-Sterlington Line through the Orange Grove-Agua Dulce Line.

Applicant states that, as a result of the loss of a major intrastate load in San Antonio, it has an excess supply of gas in its San Antonio District, a portion of which is connected to its Bruni-Comal Line. Applicant further states that it is necessary from time to time to augment the supply of gas for the Agua Dulce-Sterlington Line, and therefore, it proposes to take approximately 29,652 Mcf on a peak day of the excess gas in the Bruni-Comal Line and flow it into the Agua Dulce-Sterlington Line.

The total cost to convert the subject facilities is estimated to be under $25,000. Said costs represent certain yard and station rearrangements at Agua Dulce.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 30, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 20, 1942, in Docket No. G-216 (3 FPC 3).

(2) The existing facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the conversion and operation of said existing facilities and the transportation of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The conversion and operation of the existing facilities and the transportation of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas

Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, United Gas Pipe Line Company, to convert and operate the subject existing facilities and to transport natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of such Regulations.

(C) The subject existing facilities shall be converted and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within two months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP65–105

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 4, 1965)

On October 19, 1964, United Gas Pipe Line Company (Applicant), P.O. Box 1407, Shreveport, Louisiana, 71102, filed in Docket No. CP65–105 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and the transportation and sale of natural gas in interstate commerce to Humble Oil & Refining Company (Humble) in Cherokee County, Texas, all as more fully set forth in the application.

Applicant proposes to construct and operate approximately 75 feet of 2-inch pipe line and sales meter and regulator station and appurtenant equipment near Milepost 55.9 on the 6-inch Longview Compressor Station to Huntsville lateral, being all in the James H. Shaw A–769 Survey, Cherokee County, Texas.

Applicant proposes to use the above described facilities to provide for the sale and delivery of natural gas to Humble for use as make-up gas in Humble's gas lift operations in Neches Oil Field, Cherokee County, Texas. Estimated peak day and annual requirements of Humble of 300 Mcf and 50,000 Mcf respectively, will be purchased at a cost of 34.3 cents per Mcf.

The cost of the proposed facilities is $1,841, which will be defrayed by Applicant out of its current working funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 30, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G-232 (3 FPC 863).

(2) The proposed construction and operation of facilities and sale and delivery of natural gas by Applicant to Humble Oil & Refining Company as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and sale and delivery of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to the Applicant in this proceeding, authorizing the construction and operation of facilities and the transportation and delivery of natural gas to Humble Oil & Refining Company as more fully described in the application and exhibits in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid regulations within 60 days of the date on which this order issues.

AREA RATE PROCEEDING, DOCKET NO. AR61-1

STATEMENT OF COMMISSIONER BLACK IN RESPONSE TO "MOTION AND AFFIDAVIT TO DISQUALIFY VICE CHAIRMAN DAVID S. BLACK"*

A group of producer parties has moved that I withdraw from participation in this proceeding; or alternatively that the Commission disqualify me. It would appear that before the Commission considers whether I should be ordered to withdraw, it is appropriate that I arrive at my individual determination concerning my voluntary withdrawal.

---

*See Opinion No. 447, *infra*, p. 43.

For the reasons set forth below I must refuse to disqualify myself and, in the absence of an order of the Commission directing otherwise, I will discharge my duties as a Member of this Commission and participate fully in the decision of this case.

Movants state two separate grounds for my disqualification. They urge first that I have prejudged an issue in this case and second that I have "evinced personal bias and prejudice." The motion is based upon an address I delivered to the annual convention of the Pacific Coast Gas Association in Coronado, California on September 16, 1964. In that address I expressed my views concerning the Commission's jurisdiction over sales by independent producers in interstate commerce and the importance of this jurisdiction to consumers and to the retail distributors who serve them. I sought to answer various arguments which had been advanced in articles appearing in trade journals of the gas industry to the effect that regulation of such sales by the Federal Power Commission was unnecessary and in fact harmful to the industry and that therefore the Congress should enact legislation terminating our jurisdiction. One such argument maintains that the economic forces of competition in a free market will stabilize gas prices and keep them at a reasonable and fair level. I attempted to refute this argument stating it to be my opinion that there does not in fact exist an effective competitive market which would provide an acceptable substitute for Commission jurisdiction.

Movants assert that they have introduced evidence on the matter of competition in AR61–1, that it is an issue in these proceedings and that my remarks demonstrate that I have prejudged this issue.

My remarks were directed solely to a defense of the Commission's jurisdictional responsibility to regulate independent producer sales under the law as it has been interpreted by the United States Supreme Court (which, of course, is not and could not be an issue in AR61–1). I expressed the view that our regulatory jurisdiction should be preserved, and urged the retail gas distributors to take an active part in resisting attempts to change the law. The intent of my speech was concerned only with *whether* producer sales should be regulated; not *how* they should be regulated. If the record in this case demonstrates a quality or quantum of competition which would affect the method of regulation of producer sales in interstate commerce, this factor must be and will be considered in arriving at our decision. I have no question as to my ability to focus impartial and open minded attention on evidence of this nature.

Broad social and economic concepts pervade most of our work as regulators and are threaded through the scores of litigated cases which come before us for decision. From time to time, we may address ourselves publicly to a matter upon which, it turns out, evidence has been or is subsequently, introduced at the hearing stage in a litigated case which will eventually reach us for decision. We can, I suppose, discontinue all public statements except in the form of Commission orders to avoid this eventuality, but I do not think that this would be in the public interest. And in any event this approach would not really answer Movants' complaint. It is not the fact of the public utterance to which they object; it is the fact that the view or the opinion is held at all.

The views I expressed relative to competition were drawn from my observations as a Commissioner over the past year and a half, from participation in the regulatory process, and exposure to a large volume of published material in the press. It would be surprising if I had not formed some opinion concerning this most fundamental and much discussed question. But surely opinion is not incompatible with our obligation to make a fair and objective evaluation of the record in a formal proceeding and to render a decision based on that record. I regret that any public statements that I have made should bring into question my ability to do so. I recognize this to be my responsibility and reaffirm it without qualification.

Movants also assert that I have demonstrated personal bias against independent producers and cite in support of this contention a number of passages from my speech. They say that it is "clear from the face of the address that Commissioner Black is firmly convinced that independent producers must be tightly shackled at every turn." Personal bias is essentially a subjective matter and I can only deny that I entertain any such convictions which Movants impute to me or that my speech was intended to reflect any such sentiment. A fair reading of the speech in its entirety shows neither prejudgment of any issue in AR61–1 nor hostility to the independent producers of natural gas. It sets forth a defense of the Commission's responsibility under the law to regulate sales in interstate commerce by independent producers of natural gas, and states my disagreement with the arguments which have been advanced to end our regulatory jurisdiction. I disavow any implication which might be drawn from my remarks that I cannot or will not give full and fair consideration to the arguments of the producers who are parties to this case concerning the method by which they should be regulated to the extent such arguments are supported by the record.

For these reasons I decline to withdraw from participation in the remaining stages of this proceeding.

DAVID S. BLACK,
Commissioner.

JANUARY 5, 1965.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross and David S. Black.

COLUMBIA GULF TRANSMISSION COMPANY, DOCKET NO. CP65–126

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 5, 1965)

On November 5, 1964, Columbia Gulf Transmission Company (Applicant), filed in Docket No. CP65–126 a budget-type application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity, authorizing the construction and operation of facilities, all as more fully set forth in the application.

Applicant seeks authorization to construct and operate during the calendar year 1965 certain facilities necessary to take into its main line system natural gas purchased by United Fuel Gas Company from producers in the general area of Applicant's existing transmission system.

The application proposes total construction not to exceed $500,000, with no single project to exceed $125,000. The proposed construction of facilities will be financed from funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 30, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Columbia Gulf Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 5, 1958 in Docket No. G–15524 (20 FPC 681).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1965 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $500,000 with no single project to exceed a cost of $125,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Columbia Gulf Transmission Company to construct during the calendar year 1965, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1965, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $500,000, with no single project to exceed a cost of $125,000, and shall not be interpreted as authorization to attach new customers or to increase the volume of sales to existing customers.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

HUMBLE OIL & REFINING COMPANY, DOCKET NO. G-9287, ET AL.; NATURAL GAS PIPELINE COMPANY OF AMERICA, RP65-7; TRUNKLINE GAS COMPANY, RP65-8; MISSISSIPPI RIVER FUEL CORPORATION, RP65-9; HUMBLE GAS TRANSMISSION CORPORATION, RP65-12

ORDER RELEASING REFUNDS IN PART

(Issued January 5, 1965)

In our order issued September 29, 1964, issued in Humble Oil & Refining Co., Docket No. G-9287, *et al.*, 32 FPC 873, we directed the above-named pipeline companies to report their intended disposition of the refunds to be made by Humble Oil & Refining Company (Humble) due to the settlement of Humble's rate proceedings in Docket No. G-9287, *et al.* The reports of these companies indicate that except for *de minimis* amounts the refunds will be passed on to companies not subject to our jurisdiction.

Our order also provided that, if any state regulatory agency so requested, disbursement would be deferred until the ultimate disposition of the funds could be determined. No such requests had been received with regard to the funds to be distributed by the above-named pipeline companies.

The Commission orders:

(A) Humble and Empire Trust Company (Escrow Agent), the escrow agent appointed by Humble pursuant to Paragraph (H) of our order of July 8, 1964, issued in Humble Oil & Refining Co., Docket No. G-9287, *et al.*, 32 FPC 49, are jointly directed to release and pay over to the above-named parties the total amounts due each as specified in Refund Report filed by Humble on September 21, 1964.

(B) Humble and the Escrow Agent are jointly directed to release and pay over to the above-named customers the net earnings of such escrow account attributable to the amounts specified.

(C) Each of the above-named pipeline companies shall distribute and pay over the amounts specified in Paragraphs (A) and (B) in accordance with the report filed pursuant to Paragraph (A) of our order in Humble Oil & Refining Company, Docket No. G-9287, *et al.*, issued September 29, 1964.

(D) Pending further order of the Commission, Humble shall retain all remaining amounts to be refunded in accordance with Paragraphs (F) and (H) of the order of July 8, 1964.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

HUMBLE OIL & REFINING COMPANY, DOCKET NO. G-9287, ET AL.; NATURAL GAS PIPELINE COMPANY OF AMERICA, RP65-25; FLORIDA GAS TRANSMISSION COMPANY, RP65-26; TEXAS EASTERN TRANSMISSION CORPORATION, RP65-27; AMERICAN LOUISIANA PIPE LINE COMPANY, RP65-28; THE OHIO FUEL GAS COMPANY, RP65-29; NORTHERN NATURAL GAS COMPANY, RP65-30; TRANSCONTINENTAL GAS PIPE LINE CORPORATION, RP65-31; MISSISSIPPI RIVER FUEL CORPORATION, RP65-32; SOUTHERN NATURAL GAS COMPANY, RP65-33; TEXAS GAS TRANSMISSION CORPORATION, RP65-34

ORDER REQUIRING REPORT OF INTENDED DISPOSITION OF REFUNDS

(Issued January 5, 1965)

In our order issued September 29, 1964, in *Humble Oil & Refining Company*, Docket No. G-9287, *et al.*, 32 FPC 873, we directed the pipeline customers of Humble Oil & Refining Company to report their intended disposition of the refunds generated by the settlement of Humble's rate proceedings in Docket No. G-9287, *et al.* The reports filed with the Commission, state regulatory agencies and the customers of these pipelines (including the above-named companies) indicate that the above-named pipeline companies will receive significant amounts from one or more of Humble's direct customers.

In furtherance of the policy stated in our orders of July 8, 1964, 32 FPC 49, and September 29, 1964, issued in *Humble Oil & Refining Company*, Docket No. G-9287, *et al.*, we herein require that each of the above-named pipeline companies report the manner in which they intend to dispose of the amounts to be received from the customers of Humble. These reports shall state the amount to be received by the company from each such customer, whether the company intends to pass on all or part of the refund amount, the names of the parties to receive refunds and the amount each is to receive. If any of the above-named companies claims the right to all or part of the refund amount, it should give a brief statement of the legal or equitable basis for such claim. The amounts claimed shall be specifically itemized and the report shall set forth applicable time periods and docket numbers where such information is deemed relevant to the claim of retention.

The reports required herein shall be contemporaneously served on all state regulatory agencies which exercise jurisdiction over the customers of the above-named companies. These agencies are also being served with a copy of this order. If any of these agencies wants the disbursement of the refund amounts deferred for any reason, it should notify the Commission within ten days of the receipt of the reports required herein.

The Commission orders:

(A) The natural gas companies listed in the caption (except Humble) shall submit, in their respective dockets, within ten days of the issuance of this order, the report required herein and shall serve such reports on their customers and the interested state commissions.

(B) Any of the above-named companies claiming the right to retain any portion of the refund amount shall submit in addition a statement of the legal or equitable basis for such claims.

(C) Except as specifically ordered by this Commission, Humble shall retain the refund amounts in accordance with Paragraphs (F) and (H) of our order of July 8, 1964, as amended by our order of August 7, 1964, 32 FPC 542.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross and David S. Black.

TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. CP65-143

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 5, 1965)

On November 19, 1964, Texas Eastern Transmission Corporation (Applicant) filed in Docket No. CP65-143 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1965 and the operation of routine field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application in this proceeding.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

The total cost of the facilities covered by this application will not exceed a maximum of $5,000,000, with no single project to exceed a cost of $500,000, which costs are proposed to be financed from funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 30, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Texas Eastern Transmission Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued October 11, 1947, in Docket No. G-880 (6 FPC 148).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Subparagraph (3) of Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's com-

pliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1965 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $5,000,000, with no single project to exceed a cost of $500,000.

(8) The certificate hereinafter issued should not be construed as authorizing Applicant to attach new customers or to increase the volume of sales to existing customers.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Texas Eastern Transmission Corporation, to construct during the calendar year 1965, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Subparagraph (3) of Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1965, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $5,000,000 with no single project to exceed a cost of $500,000.

(E) The certificate issued herein shall not be construed as authorizing Applicant to attach new customers or to increase the volume of sales to existing customers.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP65-119

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 5, 1965)

On November 3, 1964, United Gas Pipe Line Company (Applicant) filed in Docket No. CP65-119 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant during the three years commencing January 1, 1965, to construct and operate natural gas pipeline facilities and compression facilities for the testing and development of underground reservoirs for the storage of natural gas located near the route of Applicant's pipeline system in the States of Alabama, Florida, Louisiana, Mississippi and Texas, all as more fully set forth in the application in this proceeding.

Applicant agrees in this "budget-type" application (1) that the volume of natural gas to be injected into the prospective storage fields will not exceed a total of 10,000,000 Mcf with not more than 2,000,000 Mcf being injected into any single reservoir; (2) that the gas will be injected for testing purposes only during off-peak periods; (3) that with the exception of occasionally withdrawing gas for testing purposes any storage field developed pursuant to authorization received in this docket will not be utilized to render service without further authorization of the Commission; (4) the total expenditure for the three-year period will not exceed $3,000,000 with not more than $1,000,000 being spent for any one-year period, and (5) the cost of the project will be charged to Account No. 822 of Part 201, Underground Storage Exploration and Development Expenses, if such project is ultimately determined to be infeasible for storage purposes.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 30, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 20, 1942, in Docket No. G–216 (3 FPC 3).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(6) The certificate issued hereinafter should be conditioned upon Applicant's compliance with the provisions of subparagraphs (1), (2), (3), (4) and (5) of Section 157.7(d) of the Commission's Regulations under the Natural Gas Act.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit the information required by Subparagraphs (6) and (7) of Section 157.7(d) of the aforesaid Regulations.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, United Gas Pipe Line Company, for a period of three years commencing January 1, 1965, to construct and operate the proposed facilities for the testing and development of underground reservoirs for the storage of natural gas as hereinbefore described, all as more fully described in the application in this proceeding and as hereinafter provided.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(C) The certificate issued by paragraph (A) above is hereby conditioned upon Applicant's compliance with the provisions of Subparagraphs (1), (2), (3), (4) and (5) of Section 157.7(d) of the Commission's Regulations under the Natural Gas Act.

(D) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant shall submit the information required by Subparagraphs (6) and (7) of Section 157.7(d) of the aforesaid Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

THE ATLANTIC REFINING COMPANY, DOCKET NOS. G–9283 AND G–9284 ET AL.[1]

ORDER TERMINATING PROCEEDINGS

(Issued January 6, 1965)

On October 8, 1964, 32 FPC 933, we issued an order in these proceedings approving a rate settlement proposal, terminating proceedings and prescribing refunds. The order provided, *inter alia*, that the Section 4(e) proceedings listed in Appendix A to the order, shall terminate upon full compliance by Atlantic Refining Company (Atlantic) with all the terms and provisions of the order. Not included among the Section 4(e) proceedings set forth in Appendix A were certain of such proceedings which relate to proposed increased rates, never made effective, under certain of the rate schedules for which settlement rates were approved. Accordingly, it is appropriate that the proceedings concerning such proposed increased rates be severed from related area rate proceedings, and terminated at the same time as the proceedings set forth in Appendix A to the order of October 8, 1964, and under the same terms and provisions.

The Commission finds:

The proposed settlement of the subject proceedings having been approved by order issued October 8, 1964, and the proposed increased rates concerned therein never having been made effective, good cause exists for terminating the proceedings, and for severing certain of the proceedings from related area rate proceedings.

The Commission orders:

Upon full compliance by Atlantic with all the terms and provisions of the order issued herein on October 8, 1964, the Section 4(e) proceedings listed in the appendix hereto shall terminate, and one of said proceedings shall be severed from the consolidated proceedings in Docket No. AR64–1.

---

[1] The additional dockets involved herein are set forth in the appendix hereto.

APPENDIX

Rate schedule Nos.	*Docket Nos.*
133	RI64–705 [1]
178	RI64–454
179	RI64–454
180	RI64–454
192	RI64–454
223	RI64–644
279	RI64–454
281	RI64–546

[1] Consolidated with Docket No. AR64–1.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

THE PERMIAN OIL AND GAS COMPANY, DOCKET NO. G–13603

ORDER AMENDING ORDER AS AMENDED

(Issued January 6, 1965)

On October 8, 1964, the Permian Oil and Gas Company (Petitioner) filed a petition to amend the order issued by the Commission on December 19, 1957, 18 FPC 815, as amended by subsequent orders of the Commission dated September 29, 1958, 20 FPC 439 and July 24, 1959, 22 FPC 124, respectively, in Docket No. G–13603.

Petitioner is the successor in interest by virtue of corporate merger of Sandar Corporation and the Home Utilities Company. The original order above mentioned was issued upon the application filed by Home Utilities Company under Section 7(a) of the Natural Gas Act. By the order of July 24, 1959 The Ohio Fuel Gas Company was directed to sell and deliver to Petitioner, volumes of natural gas up to 179 Mcf per day.

Applicant now seeks to have the volumes increased from 179 Mcf per day to 195 Mcf per day in 1965, 205 Mcf per day in 1966, 208 Mcf per day in 1967, 212 Mcf per day in 1968 and 215 Mcf per day in 1969 upon the grounds that the projected growth of its market requires the additional volumes in order to meet its demands and that it has installed facilities capable of performing the additional gas service.

Due notice of the filing of the petition to amend and opportunity for hearing thereon has been given by publication in the Federal Register on December 3, 1964 (29 F.R. 16232). No protest, petition to intervene or notice of intervention has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the order issuing a certificate in Docket No. G–13603 as amended by subsequent orders as above stated, should be further changed and amended as requested by the petition in this proceeding.

The Commission orders:

(A) The order in Docket No. G–13603 issued on December 19, 1957 as amended by orders issued on September 29, 1958 and July 24, 1959 as they pertain to the maximum peak day delivery of natural gas to Petitioner, is hereby further amended so as to increase the volumes of peak day deliveries each year beginning in 1965 through 1969 as herein above stated.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP65–98

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 6, 1965)

On October 12, 1964, Southern Natural Gas Company (Applicant) filed in Docket No. CP65–98, an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities near Ragland, St. Clair County, Alabama, all as more fully set forth in the application.

Specifically, Applicant seeks authority to construct and operate a line tap, measuring station, and 0.284 mile of 4½-inch tap line, all for the purpose of making deliveries of natural gas to a new plant of Cement Asbestos Products Company, being constructed near Ragland, Alabama. Estimated annual and peak day requirements are 162,000 Mcf and 862 Mcf, respectively. All deliveries are to be on an interruptible basis.

The estimated total cost of Applicant's proposed construction is $22,560, and will be financed with internal funds.

After due notice, no petition to intervene, notice of intervention, or protest to the granting of the application has been filed.

At a hearing held on December 22, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Southern Natural Gas Company, a Delaware corporation having its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 6, 1942, in Docket No. G–296 (3 FPC 822).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) The certificate issued hereinafter should be granted on the express condition that the interruptible service authorized herein shall be subject to any curtailment or interruption required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

(6) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Southern Natural Gas Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued hereby is granted on the express condition that the interruptible service authorized herein shall be subject to any curtailment or interruption required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(D) The facilities hereby authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 60 days from the date of the issuance of this order.

[LETTER-ORDER REJECTING RATE FILING]

January 6, 1965.*

SUN OIL COMPANY,
P.O. Box 2880,
Dallas, Texas, 75221.
Attention: Mr. R. L. Sullivan

GENTLEMEN: This is with reference to your submittals on December 9, 1964, of notices of change under your FPC Gas Rate Schedule Nos. 125, 131 and 133, proposing rate increases to level exceeding 18.0¢ per Mcf for the sale of gas to Tennessee Gas Transmission Company from various fields in Texas R.R. District No. 4.

Permanent certificates authorizing such sales were issued in Docket No. CI61-657, CI61-1101 and CI61-1584 by Commission order of March 23, 1964 (Opinion No. 422). The order provided for a moratorium on the filing of all price increases in excess of 18.0¢ per Mcf, inclusive of tax reimbursement, pending the issuance of a final decision in the area rate proceeding in Docket No. AR64-2 or until January 1, 1968, whichever is earlier. Stay of such moratorium provisions was denied in the Commission order accompanying Opinion No. 422-A, issued May 27, 1964, 31 FPC 1315.

The proposed changes in rate are in conflict with the above-mentioned moratorium provisions of the order accompanying Opinion No. 422. Accordingly, the proposed notices of change in rate submitted December 9, 1964, are hereby rejected. One copy of each such notice is being retained in the Commission's files for informational purposes. All other copies are returned herewith.

---

*Rehearing denied March 5, 1965, 33 FPC 421.

By direction of the Commission.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross and David S. Black.

INVESTMENT TAX CREDIT UNDER 1962 AND 1964 AMENDMENTS TO INTERNAL REVENUE CODE; ACCOUNTING TREATMENT BY PUBLIC UTILITIES, LICENSEES, AND NATURAL GAS COMPANIES, DOCKET NO. R-232

ORDER AMENDING ORDERS NOS. 289 AND 290

(Issued January 7, 1965)*

The Commission recently issued its Orders Nos. 289 and 290[1] in this proceeding, wherein it prescribed new accounts for public utilities and licensees, and natural gas companies to account for the investment tax credit allowed by the Internal Revenue Code.

These orders also directed the accounting to be followed by the affected companies in disposing of the amounts of accumulated investment credits in Account 253, Other Deferred Credits, which had been accumulated during the years 1962 and 1963 in accordance with the interim accounting established by the Commission in Order No. 261.

To implement adjusting entries because of accounting prescribed in Order No. 261, relating to the interim accounting for the investment tax credits, it will be necessary to amend ordering clause (F) of Orders Nos. 289 and 290. Order No. 261 required that Account 409, Income Taxes, show the actual tax amount including any investment tax credit used to reduce tax liability for the reporting period and that Account 426, Other Income Deductions, be debited with the amount of such tax reductions, thus "washing out" the effect of the tax reduction on net income. In other words, the utility operating income during the interim period was increased by the amount of the investment tax credit but the overall net income shown in annual reports to the Commission was decreased by the same amount. This was accomplished by suspending the tax credits in Account 253, Other Deferred Credits, pending final accounting disposition by the Commission. Ordering clause (F) in Orders Nos. 289 and 290 did not include entries necessary to reverse the effect of the interim accounting. We are, therefore, herein amending that clause in both Orders Nos. 289 and 290 to prevent a distortion of the tax accounts and utility operating income in 1964.

Accordingly, the Commission, acting pursuant to the authority set out in Orders Nos. 289 and 290, *orders:*

(A) The text of the opening paragraph in ordering clause (F) of Order No. 289 (29 F.R. at p. 15022) is amended to read as follows:

(F) In view of our order herein rescinding Order No. 261, issued January 9, 1963, insofar as it relates to the interim accounting of natural gas companies, such companies, to which the accounting in the following paragraphs 1, 2 and 3 are applicable for the accounting period ending December 31, 1964, shall debit Account 411.1, Investment Tax Credit Adjustments, and credit Account 421, Miscellaneous Nonoperating Income, for amounts previously debited to Account 426, Other Income Deductions, and shall dispose of the amounts of accumulated investment tax credit in Account 253, Other Deferred Credits, accumulated in accordance with Order No. 261 during 1962 and 1963, as follows:

---

*Published in the Federal Register on January 14, 1965 (30 F.R. 484).

[1] Order No. 289, issued November 2, 1964, 32 FPC 1255 (29 F.R. 15020, November 6, 1964). Order No. 290, issued December 17, 1964, 32 FPC 1470 (29 F.R. 19214, December 23, 1964).

(B) The text of the opening paragraph in ordering clause (F) of Order No. 290 (29 F.R. at p. 18215) is amended to read as follows:

(F) In view of our order herein rescinding Order No. 261, issued January 9, 1963, insofar as it relates to the interim accounting of public utilities and licensees, such companies, to which the accounting in the following paragraphs 1, 2 and 3 are applicable, for the accounting period ending December 31, 1964, shall debit Account 411.1, Investment Tax Credit Adjustments, and credit Account 421, Miscellaneous Nonoperating Income, for amounts previously debited to Account 426, Other Income Deductions, and shall dispose of the amounts of accumulated investment tax credits in Account 253, Other Deferred Credits, accumulated in accordance with Order No. 261 during 1962 and 1963, as follows:

(C) These amendments shall be effective as of the date of the issuance of the orders to which they are, respectively, amendatory.

(D) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

H. L. HAWKINS & H. L. HAWKINS, JR. (OPERATOR), ET AL., DOCKET NO. G-18077; H. B. LIVELY (OPERATOR), ET AL., DOCKET NO. CI62-1220

ORDER CONDITIONALLY APPROVING SETTLEMENT PROPOSAL AND CONDITIONALLY ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 8, 1965)

On November 3, 1964, H. B. Lively (Operator), *et al.* (Lively) filed an offer of settlement and motion for severance of its Docket No. CI62-1220 from the consolidated proceedings of H. L. Hawkins and H. L. Hawkins, Jr., Operator, *et al.*, G-18077, *et al.* and also applied for issuance of a permanent certificate of public convenience and necessity in accordance with the provisions of the proposed settlement agreement.

On April 13, 1962, Lively applied for a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the Natural Gas Act, to make sales of natural gas to Tennessee Gas Transmission Company (Tennessee) from leases located in the Columbus Field, Colorado County, Texas. The leases described in this application were acquired from Sinclair Oil and Gas Company (Sinclair).

At the time Lively acquired these leases, Sinclair was making sales of gas to Tennessee therefrom, pursuant to its certificate issued by the Commission at Docket No. G-4676, Lively, subsequent to its acquisition of these leases, on April 13, 1962, filed at Docket No. CI62-1220, an Application for Temporary and Permanent Certificate of Public Convenience and Necessity requesting authorization to continue the sale from this field to Tennessee. The Commission, on May 16, 1962, at Docket No. CI62-1220, granted Lively a temporary certificate to commence this sale.

By order issued March 30, 1964, the Commission consolidated Docket No. CI62–1220 with other pending District No. 3 certificate applications for formal hearing in the H. L. Hawkins and H. L. Hawkins, Jr. (Operator), *et al.* proceedings.

Lively received its temporary authorization to commence deliveries at a rate of 15.95016¢, conditioned to possible refunds to a floor of 13.2782¢. This condition was imposed, since Lively was assigned the acreage involved by Sinclair Oil & Gas Company, which was collecting 15.95016¢ subject to refund in Docket No. G–17141 (*i.e.*, the rate was under suspension). Sinclair's last accepted rate at the time of assignment to Lively was 13.2782¢.

Lively requests that the Commission sever its certificate application and issue a permanent certificate at an initial contract price of 15.0¢ per Mcf (less .21931¢ per Mcf dehydration charge) for the period of initial delivery to the termination of the contract. Tennessee Gas Transmission Company has joined with Lively in the submittal of the settlement proposal, under which Lively proposes to eliminate all future price escalation provisions from its Rate Schedule No. 3 and to substitute herein a life-of-contract rate of 15.0¢ (subject to a 0.21931¢ dehydration charge deduction). The primary term of the contract will expire on January 1, 1970. The proposed offer of settlement would afford Lively the same settlement rate received by Sinclair when Docket No. G–17141 was terminated in Sinclair's company-wide settlement.[1]

Lively further proposes to refund to Tennessee an amount computed by multiplying the difference between the price of 15.95016¢ per Mcf and the price of 15¢ per Mcf (less .21931¢ per Mcf dehydration charge) by the volumes of gas delivered under Lively's FPC Gas Rate Schedule No. 3 from the date of initial delivery to the date of issuance of the order herein. Interest upon said amount refunded shall be paid at the rate of 7% per annum. No interest shall accrue on this refund after November 1, 1964.

Insofar as Lively proposes to terminate the refund obligation as of November 1, 1964, the settlement proposal deviates from our standard policy. The refund obligation must extend to the date of the issuance of the order herein.

It further appears that Lively should be required to deposit the refunds due Tennessee in an appropriate number of savings accounts pending further Commission order.

The Commission finds:

(1) H. B. Lively (Operator), *et al.*, is a natural-gas company within the meaning of the Natural Gas Act, and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) The proposed sales of natural gas are subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) H. B. Lively (Operator), *et al.*, is able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The proposed sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission and necessary therefor, are required by the public convenience and necessity and are in the

---

[1] Order issued July 1, 1963, in Docket No. G–9261, *et al.*, 30 FPC 5.

public interest upon the conditions set forth below, and certificates should be issued as ordered below.

(5) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

(6) It is in the public interest and it is appropriate in carrying out the provisions of the Natural Gas Act that Lively be required to submit the report and account for the refunds and interest as ordered below.

The Commission orders:

(A) Docket No. CI62-1220 is hereby severed from the consolidated proceedings of H. L. Hawkins and H. L. Hawkins, Jr., Operator, *et al.*, Docket No. G-18077, *et al.*

(B) A certificate of public convenience and necessity is hereby issued to H. B. Lively (Operator), *et al.*, upon the conditions set forth herein authorizing the sales of natural gas in interstate commerce for resale, as proposed, and as modified by the settlement proposal and this order, and for the construction and operation of any facilities described in the application and settlement proposal herein.

(C) The certificate herein issued is granted upon the express conditions that Lively shall (1) file an executed contract amendment eliminating all future price escalation provisions from its Rate Schedule No. 3, and substitute therein a life-of-contract rate of 15.0¢, subject to a 0.21931¢ for Mcf dehydration charge deduction; (2) file a notice of change in rate under its Rate Schedule No. 3 to reflect the proposed settlement rate; (3) compute the refunds due Tennessee in Docket No. CI62-1220 to the date of the order, and submit a report to the Commission and to Tennessee setting forth the details of such computations, showing separately the principal and applicable seven percent interest, the bases used for such determination and the period covered; and (4) Lively shall be required to deposit the refunds due Tennessee in savings accounts, as specified in this paragraph, with no further interest obligation after the date of issuance of the order herein, pending further Commission orders respecting such monies. Each savings account should not exceed $10,000 and should be made in depositories whose accounts are insured to the extent of $10,000 by an agency of the Federal Government.

(D) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or Part 154 of the Regulations thereunder; *Provided, however*, that the 30-day notice provision of Part 154.94(b) and the detailed submittal requirements of Part 154.94(f) are hereby waived insofar as they apply to the filing of reductions in rates as required by this order and the settlement proposal, as supplemented.

(E) The certificates herein issued are not transferable and shall be effective only so long as Lively continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(F) The grant of certificates herein and approval of the settlement proposal, as supplemented, is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Lively, particularly any proceeding under Section 5 of the Natural Gas Act and is without prejudice to claims or contentions which may be made by the Commission, Lively, the Commission staff, or any affected party herein in any other proceeding.

(G) Upon full compliance of Lively with all the terms of this order and of the settlement proposal, Lively shall be relieved of any further refund obligations in these certificate proceedings and said proceedings shall terminate.

(H) The certificate granted by paragraph (B) above is granted upon the express condition that Lively comply fully with the terms of this order and the settlement proposal as modified herein, which settlement is expressly approved subject to the conditions of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

HOUSTON NATURAL GAS PRODUCTION COMPANY, DOCKET NOS. RI64–799 AND RI65–1

ORDER ACCEPTING OFFERS OF SETTLEMENT AND TERMINATING PROCEEDINGS

(Issued January 8, 1965)

By orders issued June 26, 1964 in Docket No. RI64–799 and July 15, 1964 in Docket No. RI65–1 the Commission suspended for one day two increased rate proposals,[1] from 14.0¢ to 15.0¢ per Mcf, of Houston Natural Gas Production Company (Houston) for its jurisdictional sales of natural gas from various fields in Texas District No. 4 to its affiliated pipeline purchaser, Valley Gas Transmission, Inc. (Valley Gas). In these orders, the Commission deferred action on the offers of settlement which accompanied the increased rate proposals. Houston, in its offers of settlement, proposed that in return, for permitting a life-of-contract settlement rate of 15.0¢ per Mcf under the subject rate schedules, it will eliminate from the related contracts the periodic price escalation provisions.

Houston and Valley Gas, by letters to the Secretary of the Commission dated October 12, 1964 and November 17, 1964, respectively, agreed that approval of the proposed settlement would not constitute a predetermination of the issue of the proper allowance for gas purchase costs in any future Valley Gas rate proceeding. Long Island Lighting Company, the only intervener in these proceedings, has indicated it does not oppose the settlement proposals.

The proposed settlement is consistent with the provisions of the Second Amendment to the Commission's Statement of General Policy No. 61–1 issued December 20, 1960, 24 FPC 1107 as amended by Order No. 264, issued March 27, 1963, 29 FPC 589. While we do not necessarily adhere to the policy statement in producer cases involving affiliation with the buyer, in view of the agreement tendered by Houston and Valley Gas to leave open the question of the proper allowance for gas purchase costs by Valley Gas, we think acceptance of Houston's offer would serve the public interest.

We desire to make it clear that our acceptance of Houston's offers of settlement shall not be considered determinative of the proper allowance for gas purchase costs which may arise in any future Valley Gas rate proceedings as agreed herein by Houston and Valley Gas, and shall not be construed as approval of any future increased rate filed by Houston in accordance with its reservation of the right to file increases to cover future tax increases, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving Houston's rates and rate schedules.

---

[1] Designated as: Supplement No. 3 to Houston Natural Gas Production Company's FPC Gas Rate Schedule No. 5 which became effective on June 29, 1964, subject to refund in Docket No. RI64–799; and Supplement No. 5 to Houston Natural Gas Production Company (Operator), *et al.* FPC Gas Rate Schedule No. 14 which became effective on July 17, 1964, subject to refund in Docket No. RI65–1.

The Commission finds:

The proposed settlement of the above-designated proceedings, on the basis described herein, as more fully set forth in the offers of settlement filed with the Commission by Houston in said proceedings, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offers of settlement filed with the Commission by Houston in the above-designated proceedings are hereby approved in accordance with the provisions of this order.

(B) Houston shall file, within forty-five days from the date of issuance of this order, contractual amendments eliminating the periodic price escalation provisions from its Rate Schedule Nos. 5 and 14 as specified in its offer of settlement. The contractual amendments shall be submitted in accordance with Part 154 of the Commission's regulations under the Natural Gas Act.

(C) The settlement rate of 15.0¢ per Mcf at 14.65 psia shall be effective without refund obligation as of June 29, 1964 under Houston's FPC Gas Rate Schedule No. 5, and as of July 17, 1964 under Houston's FPC Gas Rate Schedule No. 14, and the proceedings in Docket Nos. RI64–799 and RI65–1 shall be deemed terminated upon notification by the Secretary of the Commission that Houston has complied with the terms and conditions of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

HYDROELECTRIC LICENSES—APPLICATIONS—RECREATION PLAN EXHIBITS, DOCKET NO. R–269

ORDER NO. 292

CLARIFYING § 4.41, EXHIBIT R, RECREATION DEVELOPMENT PLANS, REGULATIONS UNDER THE FEDERAL POWER ACT

(Issued January 8, 1965)*

Since June 1, 1963,[1] the Commission has required applications for major licenses under Part I of the Federal Power Act to be accompanied by a recreation plan. This order effects a clarification of the requirement by specifying with more particularity the information which these exhibits should contain. The present rule, set out in § 4.41 of the Regulations under the Federal Power Act (18 CFR 4.41) provides:

> *Exhibit R.* A proposed plan for full public utilization of project waters and adjacent project lands for recreational purposes so far as consistent with proper operation of the project for the development of water power and other public purposes. For projects where lands of the United States will be affected, the proposed plan shall be prepared after consultation with the agency having supervision over those lands. On other lands, the plan shall be prepared after consultation with appropriate State and local agencies. The plan shall show the location of the project lands and waters proposed by the applicant for camping, picnicking, bathing, boating, fishing, hunting

---

*Published in the Federal Register on January 15, 1965 (30 F.R. 523).

[1] Order No. 260–A, Docket No. R–223, 29 FPC 777, 28 F.R. 4092.

and similar recreational activities. It shall include provisions for sanitary facilities, boat-launching ramps and access roads and trails. The applicant shall indicate the facilities it proposes to provide at its own cost consistent with the economics of the project and the potential recreational opportunities.

The purpose of the requirement is to enable the Commission to determine whether the recreational potential of the national resources to be devoted to licensed projects will be adequately developed, consistent with power development and other public purposes, in compliance with the directive in section 10(a) of the Federal Power Act. To be adequate for its purpose, the *Exhibit R* should include:

(1) A map of the project area; (2) a statement of the extent of consultation and cooperation with appropriate Federal, State, and local recreation authorities; (3) notations on the map of the location and nature of the present and planned facilities and which of these are to be supplied by the licensee; and, (4) estimates of public recreational utilization of the project.

The experience of the Commission indicates that under the present text of the rule, applicants are uncertain as to the nature of the requirement. Of the 64 *Exhibit R* filings received to date, only 35 at most could be considered acceptable. Though some have included maps, many have not, probably as a result of the absence of the word "map" in the present rule. In addition, many of the exhibits filed gave no indication of the extent of consultation and cooperation with appropriate government agencies, which is clearly directed by the present rule.

Our conclusion that a clarification of the requirement will bring about the submission of acceptable *Exhibit R's* is supported by the fact that those applicants who have been advised by letter that their original *Exhibit R's* were not acceptable have cooperated fully in furnishing to us the additional material needed to complete their filings.

The Commission further finds:

(1) This clarification of an existing rule which was adopted in compliance with the requirements of section 4 of the Administrative Procedure Act in a rule-making proceeding (Docket No. R-223) after notice and the opportunity to submit written comments, which were received and considered by the Commission, does not require further prior notice to be consistent and in compliance with that act.

(2) In view of the foregoing, it is necessary and appropriate for the purposes of the Federal Power Act that *Exhibit R* be clarified as set forth below.

The Commission, acting pursuant to the Federal Power Act, as amended, particularly sections 4, 9, 10, and 309 thereof (41 Stat. 1065, 1068; 49 Stat. 858; 16 U.S.C. 797, 802, 803, 825h), *Orders:*

(A) The text following the first sentence of *Exhibit R*, § 4.41, Subchapter B, Chapter I, Title 18 of the Code of Federal Regulations is amended as set out below. As so amended, the paragraph will read:

§ 4.41 Required exhibits.

* * * * * * *

Exhibit R. A proposed plan for full public utilization of project waters and adjacent lands for recreational purposes so far as consistent with proper operation of the project for the development of water power and other public purposes. The exhibit shall include:

(1) A map or maps on an appropriate scale, one of which covers the entire project area, clearly delineating by use of symbols, shading, cross-hatchings, etc.

(a) The location of project lands and waters (i) already developed, (ii) designated for initial development, and (iii) those ultimately planned for recreational use.

(b) The location, type, and number of the various recreational facilities in existence and those planned for immediate development, *i.e.*, access roads and trails, and facilities for camping, picnicking, bathing, boating and boat launching, fishing, hunting, and similar recreational activities, as well as provisions for sanitation and waste disposal.

(c) The location, type, and number of the various recreational facilities planned for future development according to anticipated demand. (These plans may be revised during the license period subject to approval by the Commission.)

(2) On the map, or on separate sheets to be filed as part of the exhibit, the following information:

(a) Which of the facilities shown are to be provided by the applicant or licensee at its sole cost, or in cooperation with others, consistent with the economics of the project and the potential recreational opportunities.

(b) Estimated present or initial recreational use and projected ultimate recreational use, in daytime or overnight visits. (These figures will be used in the economic analysis of the project.)

(c) The nature and extent of consultation and cooperation with Federal agencies having supervision over lands of the United States affected by the project and with appropriate State and local agencies. Copies of cooperative agreements entered into with such agencies shall be included as part of the *Exhibit R*.

(3) Except to the extent and in such particulars as the requirements may be expressly waived or modified by the Commission, *Exhibit R* maps are to be filed in conformity with the specifications for drawings contained in § 4.42.

(B) The amendment herein ordered shall be effective upon issuance of this order.

(C) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP61-92; NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP61-139

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 11, 1965)

On September 26, 1960, as amended on May 22, 1961 and September 14, 1961, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas, filed in Docket No. CP61-92 and on November 3, 1960, as amended on June 5, 1961 and September 15, 1961, Northern Natural Gas Company (Northern), 2223 Dodge Street, Omaha, Nebraska, filed in Docket No. CP61-139 their respective applications pursuant to Section 7(c) of the Natural Gas Act for certificates of public convenience and necessity authorizing the construction and operation of facilities for the acquisition, exchange and transportation of certain volumes of natural gas at several points on Northern's system in Ochiltree County, Texas, as a portion of the 50,000 Mcf of gas ultimately authorized to be exchanged at the Beaver

County exchange point, as well as additional delivery points in Ochiltree County, Texas, all as more fully set forth in the applications as amended on file with the Commission.

The applications as amended reflected that, El Paso and Northern being parties to an agreement covering the exchange up to 475,000 Mcf per day of gas that El Paso is presently delivering to Northern on an exchange basis, seek authority to construct and operate facilities for the transportation, delivery and receiving in Ochiltree County, Texas, of a portion of the gas now being delivered in Beaver County, Oklahoma. El Paso proposes to construct and operate necessary pipeline of 3½–4½-inch diameters and the necessary appurtenances and Northern proposes to construct and operate the necessary taps and valves to receive such gas in its system, all as more fully set forth in the applications, supplements and amendments thereto.

The estimated cost of the facilities proposed by El Paso is about $276,300 and to Northern about $5,200 which will be financed from funds on hand.

The facilities for which authorization in the applications as supplemented and amended is sought have been constructed and placed in operation under temporary certificates of authorization issued to El Paso and Northern respectively on February 1, 1961 and December 7, 1961.

After due notice, no petition to intervene, notice of intervention, or protest to the granting of the application has been filed.

At a hearing held on December 30, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications and exhibits, as supplemented, submitted in support of the authorizations sought, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 11, 1944, in Docket No. G–288 (4 FPC 486).

(2) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G–280 (3 FPC 967).

(3) The proposed exchange and delivery of natural gas between El Paso and Northern, the construction and operation of facilities, and the transportation of natural gas in interstate commerce, as hereinbefore described and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The aforesaid proposed exchange and delivery of natural gas, construction and operation of facilities and transportation of natural gas are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(5) El Paso and Northern are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(6) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder be conditioned upon El Paso's and Northern's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) Certificates of public convenience and necessity be and the same is hereby issued to El Paso and Northern, jointly, in this proceeding authorizing the exchange and delivery of natural gas, the construction and operation of facilities, and the transportation of natural gas in interstate commerce, as hereinbefore described, all as more fully described in the application and exhibits filed in this proceeding upon the terms and conditions of this order.

(B) Certificates issued by paragraph (A) above and the rights granted thereunder is hereby conditioned upon El Paso's and Northern's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (4) and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP61–265; TRANSWESTERN PIPELINE COMPANY, DOCKET NO. CP61–299

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 11, 1965)

On April 11, 1961, as supplemented on December 13, 1961, May 29, 1963 and June 19, 1964, El Paso Natural Gas Company (El Paso) a Delaware corporation whose mailing address is P.O. Box 1492, El Paso, Texas, filed in Docket No. CP61–265 an application for a certificate of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act, as amended, authorizing the construction and operation of certain facilities to be situated in Beaver and Ellis Counties, Oklahoma, and Ochiltree, Roberts, Hemphill and Lipscomb Counties, Texas, and the delivery to Transwestern Pipeline Company (Transwestern), on an exchange basis, of natural gas produced in the foregoing counties, all as more fully set forth in the application, as supplemented, on file with the Commission.

On May 24, 1961, as supplemented on January 22, 1963, August 19, 1963 and July 6, 1964, Transwestern Pipeline Company, P.O. Box 1502, Houston 1, Texas, filed in Docket No. CP61–299 an application for a certificate of public convenience and necessity, as amended, pursuant to Section 7(c) of the Natural Gas Act as amended authorizing the construction and operation of facilities consisting of 6.89 miles of 4½-inch field lines necessary to receive gas from producers in Ochiltree County, Texas, along with necessary high pressure well ties and measuring and regulating facilities extending to its existing full transmission system and line taps with necessary measuring and regulating apparatus to be located at two points of interconnection on its transmission system in order to implement the aforementioned exchange of gas between Transwestern and El Paso, all as more fully set forth in its application, as supplemented, on file with the Commission.

El Paso and Transwestern, either through direct leasehold ownership or gas purchase agreement, have available to them sources of natural gas situated in common or proximate production properties. Those properties appear to be generally contiguous to the respective pipeline systems of either El Paso or

Transwestern in the above counties. By mutual utilization of existing or extended facilities of either party most convenient to any given source, the parties propose to gather natural gas from the subject properties into their respective systems and to make balancing deliveries, as necessary, at two points of interconnection of their facilities in Beaver County, Oklahoma.

The exchange operations will be conducted pursuant to a Gas Exchange Agreement dated February 1, 1961, as amended, which agreement is on file with the Commission as El Paso's Rate Schedule X–12, FPC Gas Tariff, Third Revised Volume No. 2, and Transwestern's Rate Schedule X–1, FPC Gas Tariff, Original Volume No. 2. As presently constituted, the said Exchange Agreement provides for the receipt and gathering of natural gas produced from twenty-seven (27) wells in which either or both parties own an interest.

Based on estimates contained in the application, as supplemented, exchange operations under the authorizations requested contemplate the maximum daily delivery by El Paso for gathering and receipt by Transwestern of approximately 15,897 Mcf (at 14.73 psia) and the maximum daily delivery by Transwestern for gathering and receipt by El Paso of 1,906 Mcf (at 14.73 psia).

The facilities proposed to be constructed by El Paso to effectuate the exchange operations consist of approximately 19 miles of 4½-inch O. D. pipelines and necessary high pressure well ties and measuring and regulating facilities. In addition to those facilities proposed to be constructed, El Paso proposes to utilize approximately 3.14 miles of existing 4½-inch O. D. pipelines and appurtenances.

The estimated cost of all the facilities encompassed in the subject dockets is as follows: El Paso, $404,081 financed out of its current working funds, supplemented by short-term bank loans as necessary; Transwestern $178,691 financed out of available funds.

The facilities for which authorization in the applications, as supplemented, is sought, have been constructed and placed in operations under temporary certificates of authorization to El Paso and Transwestern on August 8, 1961, as amended on September 18, 1963 and July 30, 1964.

After due notice, no petition to intervene, notice of intervention, or protest to the granting of the application has been filed.

At a hearing held on December 30, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications and exhibits submitted in support of the authorizations sought, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 11, 1944, in Docket No. G–288 (4 FPC 486).

(2) Applicant, Transwestern Pipeline Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order accompanying Opinion No. 328 issued August 10, 1959 (22 FPC 391, 402).

(3) The proposed exchange of natural gas between the Applicants, and the construction and operation of the proposed facilities for the receipt and delivery of such exchange of natural gas in interstate commerce, as hereinbefore described and as more fully described in the applications and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The aforesaid proposed exchange and delivery of natural gas and the construction and operation of facilities are required by the public convenience and necessity, and certificates therefor should be issued as hereinafter ordered and conditioned.

(5) Applicants are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(6) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder be conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) Certificates of public convenience and necessity be and the same are hereby issued to the Applicants in this proceeding, jointly authorizing the exchange and delivery of natural gas as hereinbefore described, and the construction and operation of facilities for the exchange of such natural gas in interstate commerce, as more fully described in the applications and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) Certificates issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and in actual operations, as provided by paragraph (b) of Section 157.20 of the aforesaid regulations within 3 months of the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

INDIANA & MICHIGAN ELECTRIC COMPANY, DOCKET NO. E-7089

ORDER DENYING AN APPEAL AND GRANTING, IN PART, EXTENSION OF TIME FOR FILING OF BRIEFS ON EXCEPTIONS

(Issued January 11, 1965)

On December 28, 1964, Indiana & Michigan Electric Company (Company) filed two documents with the Commission: (1) "An Appeal From The Presiding Examiner's Ruling Of December 16, 1964 Denying Respondent's Motion Of August 24, 1964 To Defer Further Action Pending Congressional Consideration Of S. 2028 and S. 3038" (Appeal), and (2) a "Motion For Extension Of Time To File Brief On Exceptions" (Motion). On December 29, 1964, staff counsel filed its objections to both the appeal and the motion, indicating, however, no opposition to a reasonable extension of time of 10 days. We shall dispose of both filings in this order.

Company's appeal lies from its motion to the examiner to defer issuance of the initial decision in this case. Thus, technically, the initial decision having been issued, the appeal is moot. However, we shall treat the appeal as a motion to the Commission to defer further action in this case pending Congressional action on the above-cited legislative proposals.

Company submits that legislation is pending before the Congress which, if enacted, would remove the transactions here at issue from our jurisdiction. It further submits that the Commission has deferred action in similar cases now pending before the Commission in deference to the pendency of similar legislation. Specifically, it cites our order of August 6, 1964 in the *Dairyland Cooperative, et al.*, proceeding, Docket No. E–7113, 32 FPC 529. In that case we directed the examiner to defer issuing his initial decision until January 1, 1966, in order that "further Congressional consideration" could be given to the bill S. 2028 then pending before the Congress.

Our order in the *Dairyland* proceeding is clearly distinguishable from that requested by the Company here. S. 2028 was intended to clarify the Congressional intent regarding our authority to regulate rural electric cooperatives as public utilities, a matter which had never been resolved by this Commission or the courts and which constituted the essential issue in the *Dairyland* proceeding. In contrast, in the instant proceeding Company admits it is a public utility subject to the jurisdiction of this Commission and the recent *Colton* case[1] and the other U.S. Supreme Court decisions cited therein make our jurisdiction over its wholesale rates clear if the record here establishes as a matter of fact, that the sales in issue are sales for resale in interstate commerce. Thus, the Company asks us to defer the exercise of our responsibility under existing law, pending possible Congressional action to change our jurisdiction. We think any such action would clearly be inconsistent with our responsibilities under the Federal Power Act.

Company's motion requests an additional 45 days within which to file its brief on exceptions. Company asserts that this extension of time is necessary because of the pressure of other work; the complexity of this proceeding, and the magnitude of the record. Staff strongly opposes such a lengthy extension of time. As staff counsel properly points out, the case is almost two years old and it is in the public interest that it be decided as promptly as possible. It is reasonable to assume that at this stage of the proceeding the Company is fully conversant with the record. In deference to Company's urgent plea an extension of time will be granted, but only to January 28, 1965. The Secretary has already been directed to give notice thereof to Company.

The Commission finds:

(1) The deferral of further action in this proceeding, pending Congressional consideration of S. 2028 and S. 3038, would not be in the public interest.

(2) The granting of an additional 45 days for the filing of briefs on exceptions would not be in the public interest.

(3) A short extension of time for the filing of briefs on exceptions is fair and reasonable.

The Commission orders:

(A) The appeal of the Company of December 28, 1964 is hereby denied.

(B) The time for the filing of briefs on exceptions is extended to January 28, 1965.

---

[1] *F.P.C. v. Southern California Edison Company*, 376 U.S. 205 (1964).

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black

EXPENDITURES FOR POLITICAL PURPOSES—REPORT FORMS PRESCRIBED FOR ELECTRIC UTILITIES, LICENSEES AND NATURAL GAS PIPELINE COMPANIES—FPC FORMS NOS. 1-F, 1-M AND 2-A, DOCKET NO. R-263

ORDER NO. 293

AMENDING ANNUAL REPORT FPC FORMS NOS. 1-F, 1-M AND 2-A

(Issued January 11, 1965)*

The Commission, on December 18, 1963, amended Account 426, Other income deductions, of the Uniform System of Accounts prescribed for all classes of electric utilities, licensees and natural gas companies (Order No. 276, Docket No. R-226, 30 FPC 1539, 28 F.R. 14265). At the same time new schedules relating to expenditures classified in Account 426 were prescribed for inclusion in FPC Forms Nos. 1 and 2 filed by Classes A and B electric utilities and natural gas companies. We are now in this order prescribing generally similar schedules for inclusion in the report forms required to be filed by Classes C and D electric and natural gas companies and municipal electric utilities. These amendments to the forms provide for more detailed annual reporting of the various categories of income deductions into which Account 426 was subdivided by our Order No. 276.

Following the issuance of a notice of proposed rulemaking, issued herein on June 1, 1964 (29 F.R. 7730, June 5, 1964), a single response was received—from the Department of Public Utilities, City of Tacoma, Washington. We are adopting the two clarifying changes it suggested.

The Commission finds:

(1) The amendments herein adopted are necessary and appropriate for the purposes of the administration of the Federal Power and Natural Gas Acts.

(2) Since it is desirable that the amendments to Forms 1-F, 1-M and 2-A be made available for the reporting year 1964, good cause exists for making them effective forthwith.

The Commission, acting pursuant to the authority granted by the Federal Power Act, as amended, particularly sections 4(a), 304, 309 and 311, thereof (16 U.S.C. 797(a), 825c, 825h, 825j), and by the Natural Gas Act as amended, particularly sections 10 and 16 thereof (15 U.S.C. 717i, 717o), *orders:*

(A) Paragraph (c) of the §§ 141.2, 141.7 and 260.2, Chapter I, Title 18 of the Code of Federal Regulations, are amended, respectively, by inserting, to precede the line "Verification" in §§ 141.2(c) and 260.2(c), and at the end of § 141.7(c), a line reading "Expenditures for Certain Civic, Political and Related Activities."

(B) The annual reports, F.P.C. Forms Nos. 1-F and 2-A, prescribed for Classes C and D public utilities, licensees, and natural gas companies, by such §§ 141.2 and 260.2, respectively, are amended as follows:

(1) Effective for the reporting year 1964, a new schedule "Expenditures for Certain Civic, Political and Related Activities," as set out in Attachment A hereto,** is added at an appropriate point in each of the Forms Nos. 1-F and 2-A.

(2) On page 5 of each of the said Forms Nos. 1-F and 2-A, lines 27, 28 and 29 are revised to read as follows:

"27—Miscellaneous income deductions
28—Miscellaneous amortization

---

*Published in the Federal Register on January 19, 1965 (30 F.R. 605).

**Omitted in printing.

29—Other income deductions (Subaccount 426.4 of $____ included, see page —).

(C) Effective for the reporting year 1964 the annual report for municipal electric utilities, F.P.C. Form No. 1–M, prescribed by the said § 141.7 is amended—

(1) by adding, at an appropriate point therein, a new schedule "Expenditures for Certain Civic, Political and Related Expenditures," as set out in Attachment B hereto;*

(2) by amending line 19 of the schedule "Condensed Income Statement" on page 3 of such Form 1–M to read as follows:

"19—*Other income deductions (see schedule, page —, Expenditures for Certain Civic, Political and Related Activities)."

(D) The amendments herein made shall be effective upon the issuance of this order.

(E) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Commissioner Black *concurring* for the reasons set forth in his statement accompanying Order No. 276 issued December 18, 1963, in Docket No. R–226.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross and David S. Black.

TRANSWESTERN PIPELINE COMPANY, DOCKET NO. CP62–293

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 11, 1965)

On June 11, 1962, as supplemented on July 9, 1962, Transwestern Pipeline Company (Applicant) filed in Docket No. CP62–293 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas to Pioneer Natural Gas Company (Pioneer), and the construction of certain pipeline facilities, all as more fully set forth in the application.

Applicant proposes sales to Pioneer pursuant to Applicant's right-of-way service Rate Schedule RW–1, and proposes construction of pipeline tap valves incident to the sales. Natural gas will be delivered to Pioneer at various points on Applicant's existing pipeline facilities, and will be resold by Pioneer through its distribution facilities to farm customers for domestic and irrigational purposes.

Applicant proposes to deliver gas to Pioneer at eight points where pipeline taps now exist on Applicant's 24-inch Panhandle lateral in Carson, Castro, Potter, Randall and Deaf Smith Counties, Texas. In addition, Applicant proposes to construct approximately five pipeline tap valves and deliver gas to Pioneer at such points on Applicant's 24-inch Panhandle lateral in Gray, Parmer, and the aforesaid counties as may be necessary to serve all unconnected granters of easements and rights-of-way for said lateral who have reserved a right to have a pipeline tap installed on such easement, and at such other points as may be mutually agreed upon from time to time by the parties.

The estimated annual and peak day sales to Pioneer for the initial three year period are stated to be:

	First Year	*Second Year*	*Third Year*
Annual (Mcf)	20,000	32,000	52,000
Peak Day (Mcf)	525	840	1,365

---

*Omitted in printing.

The estimated cost of the taps to be installed is as follows:

Size taps:	*Total Cost*
1-inch	$350
2-inch	750
3-inch	870
4-inch	1,025

The cost of the proposed facilities will be defrayed initially by Applicant, but Pioneer will reimburse Applicant for such costs.

A temporary certificate was issued to Applicant in this docket by Commission letter dated August 10, 1962, authorizing construction of farm taps required for irrigational purposes.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 30, 1964 the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Transwestern Pipeline Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of August 10, 1959, in Docket No. G-14871, *et al.*, (22 FPC 391).

(2) The proposed transportation and sale of natural gas, and the proposed construction of facilities, as hereinbefore described, as more fully described in the application in this proceeding, are subject to the jurisdiction of the Commission and to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed transportation and sale of natural gas and the construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's reporting, within 30 days after each new tap is constructed, the location, actual cost, and estimated annual sales to be rendered thereby; and upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms set forth in paragraph (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, Transwestern Pipeline Company, authorizing the transportation and sale of natural gas to Pioneer Natural Gas Company, and authorizing the construction and operation of the proposed facilities hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's reporting, within 30 days after each new tap is constructed, the location, actual cost, and estimated annual sales to be rendered thereby; and upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms set forth in paragraph (e) of Section 157.20 of such Regulations.

OPINION NO. 447

AREA RATE PROCEEDING, ET AL. (PERMIAN BASIN AREA), DOCKET NO. AR61-1, ET AL.

MEMORANDUM OPINION AND ORDER REJECTING MOTION TO DISQUALIFY VICE CHAIRMAN DAVID S. BLACK

(Issued January 12, 1965)*

Syllabus

1. Where charges are made that Commissioner prejudged vital issue in case and evinced personal bias and prejudice against independent producers as a class and Commissioner filed statement denying such bias, Commission (on assumption it has requisite authority), finds no basis shown for disqualifying Commissioner from participating in proceeding. P. 44.
2. Fact that Commissioner's challenged remarks were made in context of discussion of whether existing provision of Natural Gas Act should be amended is relevant to question of prejudgment of issues. P. 44.
3. View that competition between producers is insufficient to justify repeal of regulatory jurisdiction does not imply rejection of competition as a factor in regulation nor does it prejudge question of proper rates for sales by producers in proceeding, or weight to be given to their evidence in fixing such rates. PP. 44, 45.
4. Disagreement with producer efforts to seek amendatory legislation does not demonstrate personal bias against producers as a class. P. 45.
5. There would be no basis for disqualifying Commissioner even assuming he comes to proceeding with advance views as to some important matters in issue. P. 45.
6. Even were this an adjudicatory proceeding, Commissioner's prior expression of views on a general question of fact, policy or law which might be involved would not disqualify him from further participation. P. 46.
7. In a rate-making proceeding, (essentially a legislative function and part of rule-making) an expression of views on general question which may be in issue or opposition to amendatory legislation could not be disqualifying. P. 46.
8. Commission has duty and obligation to inform Congress and general public of its programs and policies. P. 46.
9. Regulatory commissions were created by Congress in order that regulatory statutes could be administered by men who had or would acquire intimate knowledge of the industry they were regulating. P. 46.
10. *Observing* there is difference between informed and closed minds, Commission *notes* an opinion is not a prejudice or prejudgment when held by someone required and accustomed to hold all opinions subject to confirmation or rejection in light of proof. P. 47.

---

*Reconsideration and Stay denied by orders issued February 9, 1965 and February 12, 1965, 33 FPC 198, 204.

11. Regulatory process assumes that fair and intelligent decisions will be reached by Commissioners because of familiarity with special fields in which they operate and not despite it. P. 47.
12. Commission *rejects* motion to disqualify Vice Chairman David S. Black.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

On December 18, 1964, a number of the respondents in this proceeding filed a motion seeking to have Vice Chairman Black excuse himself from further participation in this proceeding or, in the alternative, for the Commission to disqualify the Commissioner from such participation. The stated grounds for the motion are that the Commissioner has prejudged a vital issue in the case and evinced personal bias and prejudice against independent producers as a class.

Commissioner Black has filed a statement, *supra*, p. 14, in which he denies any personal bias against the respondents and asserts that he will be fully able to perform his duty of reaching a proper determination in this proceeding.

While the authority of the Commission to pass upon the qualification of one of its members to participate in a particular case has not been determined,[1] we shall proceed upon the assumption that we would have such authority in an appropriate situation. We are convinced, however, that no basis has been shown here for disqualifying Commissioner Black.

The thrust of the motion is that in an address Commissioner Black made on September 16, 1964, in which he answered arguments appearing in the trade press in support of legislation then pending before Congress to repeal or limit the Commission's jurisdiction over gas producers, he expressed the view that competition among independent producers was not adequate as a substitute for price regulation by this Commission pursuant to the provisions of the Natural Gas Act. The respondents are contending in the instant proceeding involving the determination of just and reasonable producer rates that a considerable degree of competition exists among producers in the sale of gas to the interstate pipelines, and that such competitive forces should in large part be allowed to determine the just and reasonable price for gas in the Permian Basin. They now contend that the Commissioner has prejudged what they consider an essential element of their case. No contention is made that the Commissioner is personally biased against any particular producer, but it is alleged that he has shown bias against independent producers as a class in his comments in the address on the efforts of independent producers to seek legislation to remove the Commission's existing jurisdiction to fix the rates at which they sell gas in interstate commerce.

We think, contrary to the position of the respondents, that the fact that Commissioner Black's remarks were made in the content of a discussion of whether the existing provisions of the Natural Gas Act should be amended is relevant in determining whether he has prejudged the issues presented in this proceeding. Obviously the context in which his remarks were made cannot be ignored. The expression of the view that competition between independent producers is insufficient to justify repeal of our regulatory jurisdiction does not imply the rejection of competition as a factor in regulation. Such a conclusion on the legislative question is hardly a novel point of view. It has been held by the courts to be only a statement of the basic assumption underlying the existing law. Thus the Fifth Circuit Court of Appeals has indicated that "* * * the only justification for giving the Commission the duty to regulate prices was the determination by Congress that the producers have a supply that is so restricted in relation to demand that they have the economic power to bargain for prices that will be injurious to the public" (*United Gas Improvement Co.* v. *F.P.C.*, 290 F. 2d 133–135 (1961)).

---

[1] There is a division of authority among the regulatory commissions which have been required to pass upon this problem. The Federal Communications Commission (see *In the Matter of Segal and Smith*, 5 F.C.C. 3 (1937)) and the Civil Aeronautics Board (see *Colonial Airlines, Inc., Motions* 9 C.A.B. 273 (1948)) have held that they do have the power. See also *Berkshire Employees Association* v. *National Labor Relations Board*, 121 F. 2d 235–239 (CA3–1941). The Securities and Exchange Commission, on the other hand, has held that it does not (see *Otis and Co.*, 31 S.E.C. 380 (1950); *The United Corp.*, 32 S.E.C. 633 (1951)).

Obviously in making such statements neither Commissioner Black nor the court have prejudged the altogether different question of the proper rates for sales by the producers in the Permian Basin or the weight to be given the producers' evidence in fixing such rates. It would hardly seem necessary to add that disagreement with producer efforts to seek amendatory legislation does not demonstrate a personal bias against producers as a class.

Even if we assume that the Commissioner comes to this proceeding with advance views as to some of the important matters in issue, there would be no basis for his disqualification. The Supreme Court has discussed this problem in two principal cases. In *United States* v. *Morgan*, 313 U.S. 409, 420–421, an argument was made that the Secretary of Agriculture, who has the authority to fix rates of market agencies under the Packers and Stockyards Act, had shown disqualifying bias against the market agencies in a letter which he had written to the press vigorously criticizing an earlier decision of the Supreme Court which had overruled the Secretary's prior ratemaking decision. In rejecting the motion to disqualify him, the Secretary disclaimed any bias. The Supreme Court went beyond such disclaimer to hold (313 U.S. 421):

> * * * But, intrinsically, the letter did not require the Secretary's dignified denial of bias. That he not merely held, but expressed, strong views on matters believed by him to have been in issue, did not unfit him for exercising his duty in subsequent proceedings ordered by this Court * * * Cabinet officers charged by Congress with adjudicatory functions are not assumed to be flabby creatures any more than judges are. Both may have an underlying philosophy in approaching a specific case. But both are assumed to be men of conscience and intellectual discipline, capable of judging a particular controversy fairly on the basis of its own circumstances. Nothing in this record disturbs such an assumption.

Similarly, in *Federal Trade Commission* v. *Cement Institute*, 333 U.S. 683, 700–703, the Supreme Court rejected a contention of bias directed against members of the Federal Trade Commission in a case where the Commission had ruled that the use of a multiple basing-point system by members of the Institute was in violation of the Clayton Act. See also *Marquette Cement Mfg. Co.* v. *Federal Trade Commission*, 147 F. 2d 589. It was contended that the Commission, in reports to Congress and in testimony by individual commissioners before Congressional Committees, had clearly indicated in advance their view that the basing-point system was illegal and therefore were not in a position to pass upon the matter as presented by the record of a particular case. In rejecting this contention, the court stated (333 U.S. at 702–703):

> There is no warrant in the Act for reaching a conclusion which would thus frustrate its purposes. If the Commission's opinions expressed in congressionally required reports would bar its members from acting in unfair trade proceedings, it would appear that opinions expressed in the first basing point unfair trade proceeding would similarly disqualify them from ever passing on another. See *Morgan* v. *United States*, 313 U.S. 409, 421. Thus experi-

> ence acquired from their work as commissioners would be a handicap instead of an advantage. Such was not the intendment of Congress. For Congress acted on a committee report stating: "it is manifestly desirable that the terms of the commissioners shall be long enough to give them an opportunity to acquire the expertness in dealing with these special questions concerning industry that comes from experience." Report of Committee on Interstate Commerce, No. 597, June 13, 1914, 63d Cong., 2d Sess. 10–11.
>
> * * * * * * *
>
> Neither the *Tumey* decision [*Tumey* v. *Ohio*, 273 U.S. 510] nor any other decision of this Court would require us to hold that it would be a violation of procedural due process for a judge to sit in a case after he had expressed an opinion as to whether certain types of conduct were prohibited by law. In fact, judges frequently try the same case more than once and decide identical issues each time, although these involve questions both of law and fact. Certainly, the Federal Trade Commission cannot possibly be under stronger constitutional compulsions in this respect than a court.

We think these cases make clear that even if this were an adjudicatory proceeding in which the issue presented was whether the respondents had violated some provision of law which would require the imposition of sanctions, a commissioner's prior expression of his views on a general question of fact, policy or law which might be involved in the determination (as distinguished from a specific conclusion of guilt on the part of one or more of the respondents) would not disqualify him from further participation. Similarly, expression of opposition to the respondents' efforts to change the law would not show disqualifying personal bias. *A fortiori*, in a ratemaking proceeding like the present one, which Congress has recognized as an essentially legislative function and, as such, part of our rulemaking activities, an expression of views on a general question which may be in issue in the proceeding or opposition to amendatory legislation could not be disqualifying. See Administrative Procedure Act, § 2(c), 5 U.S.C. 1002(c).

In administrative agencies where commissioners are selected for their expertise, or their ability to acquire expertise with experience, it would be most surprising if a commissioner did not develop opinions on the major issues confronting his agency. To profit by his experience and to be able to explain and justify his position are important ingredients of his responsibilities. If the movants were correct in their position, Congress and the public at large could not look to the men designated to serve on the regulatory agencies for their views on the efficacy and importance of their programs or the merits of existing or proposed legislation.

The public interest would hardly be served if the Commission could be silenced on the question of whether its work is necessary and important merely by the regulated industry raising a related question as an issue in a proceeding before the Commission. The Commission is not merely determining the private rights of litigants but is charged with protecting the overall public interest. It has a duty and obligation to inform the Congress and the general public of its programs and policies.

Regulatory commissions such as the Federal Power Commission were created by Congress so that the regulatory statutes such as the Natural Gas Act could be administered by men who had or would acquire intimate knowledge of the industry they were responsible for regulating. Congress recognized that a basic fund of knowledge was an essential ingredient in making decisions which would protect the public and promote the welfare of the regulated industry. The essence of movants' motion is that the commissioners should begin their deliberation in this proceeding with a completely empty mind on the issues at stake. There is a basic contradiction between such intellectual vacuity and the expert and informed judgment which commissioners are expected to exercise.

There is also a basic difference between an informed mind and a closed one. An opinion is not a prejudice or a prejudgment, at least when held by someone required and accustomed to hold all opinions subject to confirmation or rejection in the light of the proof. Ignorance of the problems involved in the regulatory process or lack of views thereon is not the touchstone to effective and impartial exercise of regulatory judgment. The regulatory process assumes that intelligent and fair decisions will be reached by the commissioners because of their familiarity with the special field in which they operate and not despite it.

The cases cited by the movants are inapposite. Each involved an adjudicatory proceeding in which the issue was whether named respondents had violated the law. In this context it was alleged either that a commissioner (*Texaco Inc.* v. *Federal Trade Commission*, 336 F. 2d 754 (CADC)) or the Commission itself (*Gilligan, Will & Co.* v. *Securities and Exchange Commission*, 267 F. 2d 461 (CA 2)) had indicated a pre-commitment to the guilt of the accused party, or that a commissioner had previously served as a staff member in the investigation which led to the complaint (*Amos Treat & Co.* v. *Securities and Exchange Commission*, 306 F. 2d 260 (CADC); see *Securities and Exchange Commission* v. *R. A. Holman & Co.*, 323 F. 2d 284 (CADC)). The nature of the proceedings and the alleged disqualifying acts thus were essentially different from those involved here.

The motion is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CITIZENS UTILITIES COMPANY, DOCKET NO. E-7186

ORDER DENYING REQUEST TO NEGOTIATE SALE OF SECURITIES

(Issued January 12, 1965)

On October 15, 1964, Citizens Utilities Company (Applicant), a corporation organized under the laws of the State of Delaware and doing business in the States of Arizona, Colorado, Idaho, Maine and Vermont, with its principal business office in Stamford, Connecticut, filed an application, seeking permission to engage in negotiations for the sale or underwriting of the proposed issuance of $8,000,000 of its First Mortgage Bonds, and requesting that the proposed issuance of Bonds be exempted from the competitive bidding requirements of Section 34.1a(b) of the Commission's Regulations under the Federal Power Act.

The Commission by letter dated November 30, 1964, advised the Applicant that it was unable to grant the request for reasons which would be more fully set forth in an order to be issued.

The Commission's competitive bidding rule was adopted in 1950. Since that time, the marketing of electric utility bonds through competitive bidding has been demonstrated to be the best method of achieving the lowest probable cost in marketing electric utility bond issues of established companies seeking to issue significant amounts of securities. While we have on two prior occasions permitted public utilities proposing to issue mortgage bonds to test the market by negotiating sales, in both instances it subsequently developed that a lower cost of money could be and was achieved by competitive bidding.

The Applicant has not shown that there are any unusual circumstances of a nature that would warrant exempting the proposed bond issue from competitive bidding. The size of the proposed issue, $8,000,000, and the successful financial history of the company would appear to make the issue attractive to various segments of the market and thus conducive to the success of competitive bidding. Certainly there is no basis for assuming that any higher rate would be achieved by opening the issue to competition from other sources in addtion to those with which the company has previously done business.

The Commission finds:

Applicant has not made a sufficient showing that would warrant exempting the sale and underwriting of its proposed $8,000,000 First Mortgage Bond issue from the requirements of Section 34.1a(b) of the Commission's Regulations under the Federal Power Act and the request for exemption and permission to negotiate should be denied.

The Commission orders:

The Applicant's request for permission to negotiate the sale and underwriting of a proposed $8,000,000 Bond issue and request that the Bond issue be exempt from the requirements of Section 34.1a(b) of the Commission's Regulations under the Federal Power Act are hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP65-113

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued January 12, 1965)

On October 27, 1964, as supplemented December 9, 1964, El Paso Natural Gas Company (Applicant) filed in Docket No. CP65-113 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon and remove three 500 horsepower compressor units now installed in its Townsend Compressor Station, Lea County, New Mexico, and one 660 horsepower compressor unit installed in the Snyder Compressor Station, Scurry County, Texas.

Applicant states that the reason for seeking permission to abandon the compressor units above described is that the oil and associated casinghead gas production in the Townsend-Edison Field in Lea County, New Mexico has declined to such an extent that the three compressors in the station which handle the full volumes are no longer needed because transportation of the lesser volumes can be supplied by Warren Petroleum Corporation's Saunders Plant facilities without prior compression. Applicant further states that with respect to the abandonment of the compressor unit in the Snyder Station above-mentioned, it is not needed because the volume of gas now being bought by Applicant from three gasoline plants in Scurry County, Texas has declined to a point where the load can be handled by a single 660 horsepower compressor unit which will remain in operation in the station.

Applicant further states that the four compressor units, above referred to, will be stored and used in other compressor stations in the future.

The estimated cost of removing and storing will be $53,800 for the three Townsend Station units and $8,000 for the single Snyder Station unit, making a total of $61,800, which cost will be financed from current working funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 8, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 11, 1944, in Docket No. G–288 (4 FPC 486).

(2) The facilities to be abandoned, as hereinbefore described and as more fully described in the application, in this proceeding, are subject to the jurisdiction of the Commission and abandonment of such facilities by Applicant is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) Such abandonment, as hereinbefore described, is permitted by the public convenience and necessity and an order authorizing and approving same should be issued as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment by El Paso Natural Gas Company, of the facilities hereinbefore described, as more fully described in the application, in this proceeding, be and the same are hereby granted.

(B) Applicant shall advise the Commission of the date of transfer of the facilities within 10 days thereafter.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP65–114

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued January 12, 1965)

On October 27, 1964, as supplemented on December 9, 1964, El Paso Natural Gas Company (Applicant) filed in Docket No. CP65–114 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon certain facilities and for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities, all as more fully set forth in the application on file with the Commission.

Applicant proposes to abandon, by sale to the Navajo Tribe, approximately 7.162 miles of 2⅜-inch O.D. pipeline, a measuring and regulating station, and a tap, all within the Navajo Indian Reservation (Reservation), Apache County, Arizona.

Applicant seeks further authorization to construct and operate a measuring and regulating station, and necessary appurtenances, located at a point adjacent to Applicant's San Juan Mainline at the origin of the pipeline hereinbefore described.

The application states that the proposed abandonment and construction are required by the fact that the Navajo Tribe is succeeding Southern Union Gas Company, (Southern) as purchaser and distributor of natural gas hereinbefore purchased and distributed by Southern to Ganado Indian School and Mission and Kin Li Chee Boarding School, both located on the Reservation. Estimated third year annual and peak day sales are 246,913 Mcf and 1,771 Mcf, respectively.

The purchase price to be paid by the Navajo Tribe for the facilities of Applicant is $20,908 which is the depreciated original cost of such facilities. The estimated cost of the facilities proposed to be constructed by Applicant is $7,260, and will be financed with current working funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application, as amended, has been filed.

At a hearing held on January 8, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, amendment and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 11, 1944, in Docket No. G-288 (4 FPC 486).

(2) The facilities hereinbefore described, as more fully set forth in the application, as amended, in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

(6) The facilities to be abandoned by sale to the Navajo Tribe, as heretofore described, are subject to the jurisdiction of the Commission and abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(7) Such abandonment by Applicant, as heretofore described, is permitted by the public convenience and necessity and an order approving same should be issued as hereinafter provided.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, El Paso Natural Gas Company, to construct and operate the proposed facilities, and to sell natural gas as hereinbefore described, all as more fully described in the application as amended, herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable

Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date on which order issues.

(D) Permission for and approval of the abandonment by sale to the Navajo Tribe by Applicant of the facilities hereinbefore described, all as more fully set forth in the application, as amended, in this proceeding, be and the same are hereby granted.

(E) Applicant shall advise the Commission of the date of said abandonment within 10 days of the date thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

IDAHO POWER COMPANY, PROJECT NO. 1971

ORDER APPROVING REVISED EXHIBIT L DRAWING

(Issued January 12, 1965)

On September 28, 1964, Idaho Power Company, licensee for Project No. 1971, filed for Commission approval a revised tracing of Exhibit L showing temporary fish facilities for the Hells Canyon Development of Project No. 1971.

The principal change is from transporting the upstream migrant fish, after their capture in the trap at the downstream portal of the diversion tunnel over the construction area by an aerial cableway, to a plan for transporting the fish by truck.

The change in program and plans has been studied and reviewed in detail with representatives of the interested fishery agencies, both Federal and State, in a series of meetings. At the request of the fishery agencies, model tests of the proposed fish facilities were conducted by the Washington Institute of Technology, Albrook Laboratory, Pullman, Washington. The State of Idaho, Fish and Game Commission, the Oregon State Game Commission, the Fish Commission of Oregon, and the Department of the Interior, have advised us in writing of their respective concurrences in the proposed change and construction of the temporary fish facilities, as shown on the revised Exhibit L drawing for the Hells Canyon Development. Our staff has studied the revised plans for the temporary fish facilities and recommends approval.

The Commission finds:

The afore-mentioned revised Exhibit L drawing, designated and described as Exhibit L, Sheet 6 of 6 (FPC No. 1971-206), conforms to the Commission's rules and regulations and should be approved as part of the license for Project No. 1971, and Exhibit L, Sheet 6 of 6 (FPC No. 1971-200), now part of the license and which has been superseded. should be eliminated from the license for the project.

The Commission orders:

Exhibit L, Sheet 6 of 6 (FPC No. 1971-206) is hereby approved as part of the license for Project No. 1971, and superseded Exhibit L, Sheet 6 of 6 (FPC No. 1971-200) is hereby eliminated from the license for the project.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PACIFIC POWER & LIGHT COMPANY, PROJECT NO. 2082

ORDER APPROVING GENERAL PLAN FOR FISH HATCHERY

(Issued January 12, 1965)

On October 14, 1963, Pacific Power & Light Company, licensee for Project No. 2082, filed for Commission approval a general plan for a fish hatchery to be constructed at the Iron Gate development located on the Klamath River in California.

The plan was submitted pursuant to Article 49 of the license (30 FPC 499, 503) which provides that the licensee shall construct or arrange for the construction, at its expense, of a fish hatchery at Iron Gate development. In addition the article requires the licensee to prepare plans for the hatchery in cooperation with the State of California, Department of Fish and Game of the United States Fish and Wildlife Service, Department of Interior; and to submit the plans to the Commission for approval not later than October 15, 1963. The hatchery is to be constructed within one year from the date of approval of the plans by the Commission.

The plan, which shows the general layout of the hatchery and associated facilities was prepared in cooperation with the Department of Fish and Game and the United States Fish and Wildlife Service, Department of Interior. By letter dated July 20, 1964, the Department of Interior, and by letter of June 17, 1964, the California Department of Fish and Game, advised the Commission of their concurrence in the general plan. In addition, each agency made certain recommendations with respect to the detail design plans, which are not being approved by this order. The licensee advised by letter of October 9, 1964, that it has discussed with the two agencies the several recommendations they have made with respect to detail design plans and stated that it believes that such plans can be drawn satisfactorily on a cooperative basis.

The Commission finds:

It is consistent with the public interest that the general plan for the Iron Gate Fish Hatchery be approved as hereinafter provided.

The Commission orders:

(A) The plan for the Iron Gate Fish Hatchery, as shown on Drawing No. G–9133, entitled Fish Hatchery Site Plan, a copy of which is on file with the Commission, is hereby approved, subject to such reasonable modifications as the Commission may hereafter prescribe to effectuate the provisions of Article 49 (30 FPC, 499, 503), upon the recommendation of the Secretary of the Interior or the California Department of Fish and Game.

(B) In preparing the detailed design plans, the licensee shall cooperate with the California Department of Fish and Game and the United States Fish and Wildlife Service, Department of Interior. If the Licensee and those two agencies cannot agree on the detail design plans, upon petition by any of the parties, the matter shall be resolved by the Commission, after notice and opportunity for hearing.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Federal Power Act, and failure to file such an application shall constitute acceptance of this order.

Before Commissioners: Joseph C. Swidler, Chairman: L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP65-81

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 12, 1965)

On September 25, 1964, Southern Natural Gas Company (Applicant) filed in Docket No. CP65-81 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of natural gas facilities, for the purpose of selling and delivering additional quantities of natural gas on both a firm and interruptible basis to Mississippi Chemical Corporation (Mississippi Chemical) at Yazoo, Mississippi, all as more fully set forth in the application.

Applicant proposes to construct and operate approximately 6.3 miles of 8⅝-inch loop line, 350 additional horsepower at Applicant's Rankin Station, and compressing facilities of 1,080 horsepower to be installed at Applicant's existing Gwinville Station.

Applicant proposes to use the above-described facilities to enable it to deliver additional quantities of natural gas to the Mississippi Chemical plant, pursuant to a letter agreement between the parties dated August 26, 1964. Present peak day deliveries to Mississippi Chemical will be increased as follows: firm, from 8,000 Mcf per day to 29,000 Mcf per day; interruptible, from 8,000 Mcf per day to 23,000 Mcf per day. Annual quantities will be increased as follows: firm, from 2,920,000 Mcf to 10,270,000 Mcf; interruptible, from 2,509,730 Mcf to 8,159,730 Mcf. All gas volumes are stated at 14.73 psia.

The estimated cost of construction of the proposed facilities is $508,340 and will be defrayed from cash on hand.

After due notice no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 8, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Southern Natural Gas Company, a Delaware corporation having its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 6, 1942, in Docket No. G-296 (3 FPC 822).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed transportation and delivery of natural gas by Applicant are

subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) The certificate issued hereinafter should be granted on the express condition that the interruptible service authorized hereinafter should be subject to any curtailment or interruption required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

(7) The certificate issued hereinafter should not entitle Mississippi Chemical to whom firm deliveries are authorized hereinafter to any priorities or rights to additional gas for meeting any future increases in its requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Southern Natural Gas Company, to construct and operate the proposed facilities and to transport and deliver natural gas as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation and the transportation and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date on which this order issues.

(D) The certificate issued hereby is granted on the express condition that the interruptible service authorized herein shall be subject to any curtailment or interruption required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

(E) This certificate shall not entitle Mississippi Chemical to whom firm deliveries are authorized herein to any priorities or rights to additional gas for meeting any future increases in its requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP64-218 (PHASE II)

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued January 12, 1965)

On March 30, 1964, as supplemented on May 1, July 15 and September 4, 1964, Tennessee Gas Transmission Company (Applicant), filed in Docket No. CP64-218, an application pursuant to Section 7 of the Natural Gas Act for authorization to abandon certain facilities, in part by sale and in part in place, and to construct and operate other facilities (transmission and river crossings), all as more fully set forth in the application and supplements.[1]

Applicant in Phase II of its proposal seeks authorization to (1) abandon by transfer facilities consisting of 316 miles of existing 30-inch transmission pipeline extending from Agua Dulce, Texas, to the Sabine River in Newton County, Texas, with related facilities, (part of 366.7 miles of 30-inch pipeline authorized in Docket No. G-8215, extending from a point in Nueces County, Texas, to a point in Jefferson Davis Parish, Louisiana, and known as the Agua Dulce-Kinder Line) to an affiliate and (2) construct and operate 27.19 miles of 12-inch pipeline extending from Applicant's Bay City Line to the Leabo Plant Line. The volumes of natural gas formerly transported from Agua Dulce to Louisiana for further transportation northward will be transported through its mainline facilities.

Applicant further states the assignment and transfer of the approximately 316 miles of 30-inch pipeline to its affiliate will be made at net book value estimated to be $24,943,000 as of June 30, 1964. The cost of the 27.19 miles of 12-inch pipeline to be constructed is stated to be $1,551,500 (inclusive of direct cost, contingencies, overhead and interest charges) and will be financed from funds placed in escrow resulting from the disposition of the Agua Dulce-Sabine facilities or a revolving credit fund.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application, as supplemented, has been filed.

At a hearing held on January 8, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplement and exhibits, submitted in support of the authorizations sought herein, and upon consideration of the record, finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of July 12, 1947, in Docket No. G-910 (6 FPC 777).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding (Phase II), are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof

---

[1] Phase I facilities proposed to be abandoned and to be constructed and operated by Applicant were authorized by order of the Commission issued June 26, 1964, 31 FPC 1590. Notice of the proposals published May 27, 1964 (29 F.R. 6967).

by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) The facilities to be abandoned, as heretofore described, are subject to the jurisdiction of the Commission, and abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(7) Such abandonment by Applicant, as heretofore described, is permitted by the public convenience and necessity and an order authorizing and approving same should be issued as hereinafter ordered.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Tennessee Gas Transmission Company, to construct and operate the proposed facilities, as hereinbefore described, all as more fully described in the application, as supplemented, in Docket No. CP64-218 (Phase II), upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 9 months from the date on which this order issues.

(D) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, all as more fully described in the application, as supplemented, in Docket No. CP64-218 (Phase II), be and the same is hereby granted.

(E) Applicant shall advise the Commission of the date of the abandonment within 10 days of the date thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

ARKANSAS LOUISIANA GAS COMPANY, DOCKET NO. CP65-132

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 13, 1965)

On November 9, 1964, Arkansas Louisiana Gas Company (Applicant) filed in Docket No. CP65-132 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1965 and the operation of natural gas facilities for the sale of natural gas to direct customers and distribution customer consumers and for miscellaneous rearrangements not resulting in any change of service rendered by means of the facilities involved, all as more fully set forth in the application in this proceeding.

Applicant proposes to construct approximately 200 pipeline taps on its existing system to deliver natural gas to individual domestic and commerical customers or for new town border connections or rural extensions to consumers, and approximately 150 pipeline taps, and under proper conditions service lines or market laterals, for direct sales to consumers for road building, irrigation, agriculture, processing and general use in areas outside of local distributor's franchise areas. Applicant also proposes to construct facilities necessary for a maximum of 25 miscellaneous rearrangements.

The total cost of facilities proposed under this application will not exceed a maximum of $300,000 and the total deliveries to any one consumer will not exceed a maximum of 100,000 Mcf of natural gas per year.

The application indicates that the construction projects for which authorization is requested will not increase the capacity of Applicant's transmission systems and will not provide for any additional or increased gas sales volumes under jurisdictional rate schedules. Further, none of the gas delivered pursuant to this order will be used by any consumer for boiler fuel purposes, as defined by subparagraph (9) of Section 157.7(c) of the Commission's Regulations.

The estimated cost of the proposed facilities will be financed with current funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 8, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Arkansas Louisiana Gas Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of January 26, 1943, in Docket No. G–252 (3 FPC 910).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(6) The authorization hereinafter granted should be limited to construction during the calendar year 1965 and the total expenditures for facilities to be con-

structed thereunder should be limited to a maximum of $300,000, with the total deliveries to any one customer not to exceed a maximum of 100,000 Mcf of natural gas per year.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with subparagraph (8) of Section 157.7(c) of the Commission's Regulations under the Natural Gas Act.

(8) The certificate issued hereinafter should be conditioned upon Applicant's compliance with the provisions of subparagraph (7) of Section 157.7(c) of the aforesaid Regulations.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Arkansas Louisiana Gas Company, to construct during the calendar year 1965 the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities to sell natural gas to direct customers as hereinafter provided.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(C) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1965 and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $300,000, with the total deliveries to any one customer limited to a maximum of 100,000 Mcf of natural gas per year.

(D) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with subparagraph (8) of Section 157.7(c) of the Commission's Regulations under the Natural Gas Act.

(E) The certificate issued by paragraph (A) above is expressly conditioned upon Applicant's compliance with the provisions of subparagraph (7) of Section 157.7(c) of the aforesaid Regulations and, further, shall not entitle any industrial customer to whom firm deliveries are authorized therein to any priorities or rights to additional gas for meeting any future increases in their requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

ARKANSAS LOUISIANA GAS COMPANY, DOCKET NO. CP65-133

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 13, 1965)

On November 9, 1964, Arkansas Louisiana Gas Company (Applicant) filed in Docket No. CP65-113 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1965 and the operation of routine field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application in this proceeding.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new and existing supplies of natural gas in various producing areas generally coextensive with said system.

The total cost of the facilities covered by this application will not exceed a maximum of $3,505,444, with no single project to exceed a cost of $500,000, which costs are proposed to be financed from current working funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 8, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Arkansas Louisiana Gas Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of January 26, 1943, in Docket No. G–252 (3 FPC 910).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with subparagraph (3) of Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1965 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $3,505,444, with no single project to exceed a cost of $500,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Arkansas Louisiana Gas Company, to construct during the calendar year 1965, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with subparagraph (3) of Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1965, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $3,505,444, with no single project to exceed a cost of $500,000.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP65-137

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 13, 1965)

On November 13, 1964, Cities Service Gas Company (Applicant) filed in Docket No. CP65-137 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1965 and the operation of routine field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application in this proceeding.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

The total cost of the facilities covered by this application will not exceed a maximum of $3,000,000, with no single project to exceed a cost of $500,000, which costs are proposed to be financed from treasury cash.

On December 11, 1964, the State Corporation Commission of the State of Kansas filed a notice of intervention in the subject proceeding; however, on December 31, 1964, said notice was withdrawn.

After notice, no petition to intervene, other notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 8, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G–298 (4 FPC 471).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3)Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with subparagraph (3) of Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1965 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $3,000,000, with no single project to exceed a cost of $500,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Cities Service Gas Company, to construct during the calendar year 1965, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with subparagraph (3) of Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1965, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $3,000,000, with no single project to exceed a cost of $500,000.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP65-152

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 13, 1965)

On November 23, 1964, Cities Service Gas Company (Applicant) filed in Docket No. CP65-152 an application pursuant to Section 7 (c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during calender year 1965, and operation of small field compressor units on its gathering laterals in various gas producing fields connected to Applicant's system in order to take into its certificated main pipeline system natural gas which it has contracted to take from producers in these fields, all as more fully set forth in the application in this proceeding.

The compressor units to be installed will range from 200 to 500 horsepower and the size and number of compressor units to be installed will vary from field to field. Applicant states that such compressor facilities are required due to the normal decline in well-head working pressures of the wells in various fields connected to Applicant's gathering systems, thus requiring Applicant to reduce the working pressures in such gathering systems to enable it to receive volumes of gas required to be taken from each producing area in order to meet the requirements of Applicant's customers.

The total estimated cost of the facilities to be installed will not exceed $500,000, nor will the cost of compressor units for any single producing field exceed $200,000. Applicant proposes to finance construction with treasury cash.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held January 8, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G-298 (4 FPC 471).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter a statement in compliance with subparagraph (3) of Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1965, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $500.000, with no single project to exceed a cost of $200,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Cities Service Gas Company, to construct during the calendar year 1965 the proposed compressor facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with subparagraph (3) of Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted by paragraph (A) above is hereby limited to construction during the calendar year 1965, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $500,000, with no single project to exceed a cost of $200,000.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

COLORADO INTERSTATE GAS COMPANY, DOCKET NO. CP65–146

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 13, 1965)

On November 20, 1964, Colorado Interstate Gas Company (Applicant), filed in Docket No. CP65–146 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities necessary to establish a new delivery point to Plateau Natural Gas Company (Plateau) in Cimarron County, Oklahoma.

Applicant proposes to construct and operate gas measurement and regulating facilities necessary to deliver, during off-peak periods, natural gas to Plateau

Natural Gas Company (Plateau) for resale to operate seasonal irrigation pumps. Plateau does not propose to increase its presently effective contract demand quantity.

The estimated cost of the facilities is $7,260, and will be defrayed with current working funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 8, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorizations, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Colorado Interstate Gas Company, a Delaware corporation having its principal place of business in Colorado Springs, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued June 5, 1945, in Docket No. G-294 (4 FPC 936).

(2) The proposed construction and operation of facilities and sale of natural gas, as hereinbefore described and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and sale of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, authorizing the construction and operation of facilities and the sale of natural gas as more fully described in the application in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation and the transportation of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

(D) Applicant shall file within 30 days after the issuance of this order a superseding service agreement with Plateau Natural Gas Company executed in accordance with the Commission's Regulations reflecting the terms and conditions of the sale and delivery of natural gas to Plateau Natural Gas Company.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP65–127

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 13, 1965)

On November 5, 1964, El Paso Natural Gas Company (Applicant), El Paso, Texas, filed in Docket No. CP65–127 a "budget-type" application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and the sale and delivery of natural gas by means thereof by Applicant's Southern Division System, all as more fully set forth in the application.

Specifically, Applicant seeks authorization to construct and operate certain facilities for the sale and delivery of natural gas to its existing authorized Southern Division distributor customers, for resale and general distribution to residential, non-residential, and irrigation consumers situated in existing market areas, including rural, unincorporated areas within a franchise or service area of such customers, in the States of Texas, New Mexico, Arizona, and San Juan County, Utah. The application states that such sales and deliveries will not, however, be made to distributor customers for resale and general distribution in those market areas served, or proposed to be served, in whole or in part by another pipeline or in communities not then having natural gas service.

The sales and deliveries to be covered by this budget-type authorization will not exceed 100,000 Mcf annually through any given facility installed and the gas will not be used or resold for boiler fuel purposes. The proposed facilities will consist of thirty taps, together with standard appurtenances necessary for the operation thereof; twenty-five measuring and regulating stations, together with standard appurtenances necessary for the operation thereof; and three lateral or loop pipelines, together with standard appurtenances necessary for the operation thereof, including measuring and regulating facilities, not to exceed a maximum diameter of 8⅝-inch O. D. and a maximum length of 12 miles.

The total estimated cost of the proposed facilities is not to exceed $300,000, and will be financed with current working funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 8, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record, finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 29, 1942, in Docket No. G–242 (3 FPC 851).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and/or sale of natural gas in interstate commerce and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(6) The authorization hereinafter granted should be limited to construction during the calendar year 1965 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $300,000, with the total deliveries to any one customer not to exceed a maximum of 100,000 Mcf of natural gas per year.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, El Paso Natural Gas Company, to construct during the calendar year 1965 the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities to sell natural gas to distributors for resale as hereinafter provided.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(C) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1965 and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $300,000, with the total deliveries to any one customer limited to a maximum of 100,000 Mcf of natural gas per year.

(D) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP65-128

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 13, 1965)

On November 5, 1964, El Paso Natural Gas Company (Applicant) El Paso, Texas, filed in Docket No. CP65-128 a "budget-type" application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and the sale and delivery of natural gas by means thereof by Applicant's Northwest Division System, all as more fully set forth in the application.

Specifically, Applicant seeks authorization to construct and operate certain facilities for the sale and delivery of natural gas to its existing authorized Northwest Division distributor customers, for resale and general distribution to consumers situated in existing market areas, including rural, unincorporated areas within a franchise or service area of such customers, in the States of Colorado, Utah, Wyoming, Idaho, Oregon and Washington. The sales and deliveries will not, however, be made to distributor customers for resale and general distribution in those market areas served, or proposed to be served, in whole or in part by another pipeline company or in communities not then having natural gas service. Such sales and deliveries will not exceed 100,000 Mcf annually through any given facility installed. The gas will not be used or resold for boiler fuel purposes.

The proposed facilities will consist of twenty taps, together with standard appurtenances necessary for the operation thereof; twenty measuring and regulating stations, together with standard appurtenances necessary for the operation thereof; and three lateral or loop pipelines, together with standard appurtenances necessary for the operation thereof, including measuring and regulating facilities, not to exceed a maximum diameter of 8⅝-inch O.D. and a maximum length of 12 miles.

The total estimated cost of the proposed facilities is not to exceed $300,000, and will be financed with current working funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 8, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record, finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 29, 1942, in Docket No. G–242 (3 FPC 851).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and/or sale of natural gas in interstate commerce and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(6) The authorization hereinafter granted should be limited to construction during the calendar year 1965 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $300,000, with the total deliveries to any one customer not to exceed a maximum of 100,000 Mcf of natural gas per year.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, El Paso Natural Gas Company to construct during the calendar year 1965 the proposed facilities hereinbefore described as more fully described in the application in this proceeding, and to operate such facilities to sell natural gas to distributors for resale as hereinafter provided.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(C) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1965 and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $300,000, with the total deliveries to any one customer limited to a maximum of 100,000 Mcf of natural gas per year.

(D) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP65-138

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 13, 1965)

On November 13, 1964, Northern Natural Gas Company (Applicant) filed in Docket No. CP65-138 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1965 and the operation of certain facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally coextensive with said system. Additionally, Applicant will construct and operate horsepower and pipeline additions to present gathering systems.

The total cost of the facilities covered by this application will not exceed a maximum of $5,000,000, with no single project to exceed a cost of $500,000, which costs are proposed to be financed from cash on hand or from cash generated from operations.

On December 11, 1964, the State Corporation Commission of the State of Kansas filed a notice of intervention in the subject proceeding; however, on December 28, 1964, said notice was withdrawn.

After due notice, no petition to intervene, other notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 8, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G–280 (3 FPC 967).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with subparagraph (3) of Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1965 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $5,000,000, with no single project to exceed a cost of $500,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Northern Natural Gas Company, to construct during the calendar year 1965, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with subparagraph (3) of Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1965, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $5,000,000 with no single project to exceed a cost of $500,000.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TRANSWESTERN PIPELINE COMPANY, DOCKET NO. CP65-103

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 13, 1965)

On October 15, 1964, Transwestern Pipeline Company (Applicant) filed in Docket No. CP65-103 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the acquisition and operation of certain minor gas facilities which were installed by producers in Texas, Kansas and Oklahoma, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that it has agreed to acquire these facilities through which gas is already being received by Applicant. No additional sales or purchases of gas are contemplated or proposed herein. The facilities to be acquired include small diameter gathering lines, dehydrators, metering and related facilities connecting wells of the producers to Applicant's system. The application indicates that none of the facilities involved will increase Applicant's mainline capacity.

The original cost of the facilities to be acquired was $138,740.51. Applicant will pay the original cost less depreciation. Said costs will be financed from funds available from company operations.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 8, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Transwestern Pipeline Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of August 10, 1959, in Docket No. G-14871, *et al.* (22 FPC 391).

(2) The facilities hereinbefore described, as more fully described in the appli-

cation in this proceeding, are to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the acquisition and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The acquisition and operation of the subject facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (d)(1), (d)(2), (d)(3) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Transwestern Pipeline Company, to acquire and operate the subject facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (d)(1), (d)(2), (d)(3) and (e) of Section 157.20 of such Regulations.

(C) The acquisition hereby authorized shall be completed and the facilities placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within three months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

ALABAMA POWER COMPANY, PROJECT NO. 2407

ORDER ISSUING LICENSE (MAJOR) AND DISMISSING PETITION TO INTERVENE

(Issued January 14, 1965)

Application was filed on September 10, 1963 by Alabama Power Company (Applicant) for a license under Section 4(e) of the Federal Power Act (Act) for constructed Project No. 2407, known as the Yates Project, located on the Tallapoosa River, in Tallapoosa and Elmore Counties, Alabama, in the vicinity of Tallassee and Carrville.

According to the application for license, the project was developed initially between 1899 and 1902. In 1919 a portion of the original dam was washed out by a flood. Applicant purchased the project in 1923 and made repairs in 1924. Redevelopment was commenced in 1927. Commercial operation for the first generating unit commenced on May 17, 1928 and the second unit commenced operation on May 26, of the same year. There has been no substantial project construction since July 1, 1928.

The Yates Project is situated on the Tallapoosa River about 53 miles above its confluence with the Coosa River which joins with the Tallapoosa River to become the Alabama River. The United States has improved the Tallapoosa River for navigation from its mouth to a point 48 miles upstream therefrom.

The Yates dam height is about 70 feet from base to crest (normal pool elevation), and embraces a drainage area of 3,288 square miles. At normal pool elevation the area of the Yates reservoir is 2,000 acres. A five foot draw-down provides 8,900 acre-feet of usable storage. The Yates Project is capable of affecting the stage of the Tallapoosa River in the stretch improved for navigation and the stage of the Alabama River at the Montgomery gage situated 57 miles downstream from the project.

The Secretary of the Army and the Chief of Engineers have approved the plans of the project structures affecting navigation pursuant to Section 4(e) of the Act, and a condition was recommended for inclusion in any license for the project to insure that the project would not be operated in a manner that would nullify the provisions in the interest of navigation included as Article 8 in Applicant's license for Martin Project No. 349 located immediately upstream from the Yates Project.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project, conditions in the interest of fish and wildlife and recreation.

The Department of Health, Education and Welfare has advised that no water supply or degradation problems have been observed as a result of the project or its operation and none is foreseen; also, it is not expected by the Department that the granting of any license for the project will create or intensify mosquito problems.

On December 13, 1963, Ben Walker, *et al.* filed a petition to intervene in this proceeding stating, among other things, that the petitioners are owners of lands along the Tallapoosa River which were flooded on February 24, 1961 by the release by Applicant of water from Applicant's Martin Dam.[1] Petitioners allege that as a result of such release, many head of cattle belonging to Petitioners were drowned and sand was deposited on their lands which greatly decreased their fertility and productivity. The petition also states that petitioners have instituted suits to recover damages from the flooding, which suits were, at the time of filing of the petition, pending in the Circuit Court of Macon and Elmore Counties, Alabama. On January 7, 1964, following the granting by the Commission of an extension of time to reply, Applicant filed a motion to dismiss the petition, stating, among other things, that the relief requested by petitioners relates solely to alleged civil causes of action then pending before Courts duly constituted under the laws of the State of Alabama and that the alleged relief sought in the petition relates solely to an alleged operation on one occasion of Applicant's Martin Project and not to the operations of the Yates Project No. 2407. Upon consideration of the above pleadings, we agree with Applicant that the petitioner has no interest in the present application and that its claim against Applicant is totally unrelated to the issues which we must consider in passing upon the license application. Accordingly, we are herein dismissing the petition to intervene.

While Applicant filed as part of its application an Exhibit R, it has not filed a recreational use plan appropriate for approval. By Article 33 herein we are requiring Applicant to cooperate with Federal, State and local agencies in the interest of recreation in connection with the use of project lands and waters by the public and to keep us advised at stated intervals with respect to the results.

---

[1] The Martin dam of licensed Project No. 349, is situated about 8 miles above Yates dam of Project No. 2407.

Exhibit K, Sheet 4 (FPC No. 2407-5) filed as part of the application for license does not show an unsurveyed island which is occupied by the project, and the Department of the Interior has been requested to make a field survey to determine the status of the land involved.

Applicant requests a 50-year license, effective from the date of its issuance. In accordance with the criteria set forth in our April 25, 1962 Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of April 1, 1962 and a termination date of December 31, 1993.

The Commission finds:

(1) The project affects navigable waters of the United States.

(2) Applicant is a corporation organized under the laws of the State of Alabama, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given as required by the Act. Except for the aforementioned petition to intervene, no protests have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 42,700 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable.

(7) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of this license.

The Commission orders:

(A) This license is hereby issued to Alabama Power Company (Licensee) of Birmingham, Alabama, under Section 4(e) of the Federal Power Act, for a period effective as of April 1, 1962 and terminating December 31, 1993, for the continued operation and maintenance of the Yates Project No. 2407, located on the Tallapoosa River, and affecting navigable waters of the United States, subject to the terms and conditions of the Act which is hereby incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) The Yates Project No. 2407 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the Licensee or by the United States; such project area and project boundary being more specifically shown and described by the following exhibits which formed a part of the application for license:

Exhibit	FPC No.	Showing
J	2407-1	General Map.
K	2407-2	Detail Map.
	2407-3	Detail Map.
	2407-4	Detail Map.
	2407-5	Detail Map.
	2407-6	Detail Map.

(ii) all project works consisting principally of: an open, fixed crest, concrete spillway with concrete non-overflow sections creating a reservoir at normal pool elevation of 344 feet with an area of 2,000 acres extending about eight miles to the Martin Dam; a powerhouse containing two 25,000 hp turbines connected to two 16,000 kw generators with provisions for a future unit; and appurtenant electrical and mechanical facilities; the location and character of the project works being more fully shown and described by the exhibits hereinbefore cited and other exhibits which are designated and described as follows:

Exhibit L	FPC No.	Showing
Sheet 1	2407-7	General Layout.
Sheet 1-A	2407-13	Plan and sections of abutments.
Sheet 2	2407-8	Transverse section of dam and powerhouse.
Sheet 3	2407-9	Longitudinal section of powerhouse, looking upstream.
Sheet 4	2407-10	Plan of powerhouse—general arrangement of equipment.
Sheet 5	2407-11	Cross section of spillway and plan of powerhouse.

Exhibit M, consisting of three typewritten pages entitled, "General Description of Mechanical, Electrical and Transmission Equipment."

(iii) all other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission: also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-3 (Revised August 1, 1964), 32 FPC 1114, entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States," which terms and conditions, designated as Article 1 through 29, are attached hereto and made a part hereof, except for Article 25 thereof; and subject to the following special conditions set forth herein as additional articles:

Article 30. The Licensee shall pay to the United States the following annual charge, effective as of April 1, 1962:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations in effect from time to time. The authorized installed capacity for such purposes is 42,700 horsepower.

Article 31. The Licensee shall, upon the determination by the Department of the Interior of an unsurveyed island, file with the Commission an amended Exhibit K, Sheet 4 (FPC No. 2407-5) to include such island in this license, and the Commission reserves the right to determine at a later date the annual charge, if any, for the use, occupancy and enjoyment of its lands.

Article 32. The Licensee shall not operate the Yates Project in such a manner that would nullify the provisions in the interest of navigation included in the Licensee's license for the Martin Project No. 349, located immediately upstream.

Article 33. Licensee shall cooperate with Federal, State and local agencies in the development and maintenance of access areas and roads and such other facilities necessary for full recreational utilization by the public of project lands and waters, consistent with the terms of the license and the operation of the project. At the end of six (6) years from the date of issuance of this license and every sixth year thereafter, Licensee shall advise the Commission by letter of the results of cooperation with such agencies and of further recreation development at the project.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license.

(E) The aforementioned petition to intervene in this proceeding filed by Ben Walker, *et al.* is hereby dismissed.

(F) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

THE WASHINGTON WATER POWER COMPANY, PROJECT NO. 204

ORDER ACCEPTING SURRENDER OF LICENSE

(Issued January 14, 1965)

Application was filed on January 21, 1963 by The Washington Water Power Company under Section 6 of the Federal Power Act for surrender of its license for the Grangeville Hydroelectric Project No. 204 located on the South Fork of Clearwater River in Idaho County, Idaho, and affecting lands of the United States within the Nez Perce National Forest.

The license was issued on January 19, 1923 for a period of 50 years. The project, as licensed, consists of an arched concrete dam, a wood stave penstock extending from the dam downstream to the stone powerhouse housing a generator and 1,700 horsepower turbine, a 13 kv transmission line extending from the station switchyard to the Town of Grangeville, Idaho, a switchyard, and appurtenant facilities.

The application recites that the 13 kv transmission line is to be retained by the licensee and used as a distribution line to serve several retail customers, and that application will be made to the Forest Service for a special use permit for the occupancy by the line of National Forest lands. Energy for the line will be obtained from another source, namely a 115 kv/69 kv stepdown transformer at Grangeville.

The application also recites that the project is a relatively small generating plant located on the South Fork of Clearwater River, a stream which is being developed by fish and game agencies for fish spawning, and that it is in the public interest to remove the project, except for the transmission line, in keeping with the fishery rehabilitation program already established by the Idaho Department of Fish and Game.

Public notice of the application has been given. No protests or petitions to intervene have been received.

By letter dated November 24, 1964, the U.S. Forest Service advised us that the National Forest lands occupied by the project have been restored to a condition satisfactory to the Service.

Annual charges under the license for the project, in the amount of $104.48 have been paid through the year 1963.

The Commission finds:

Acceptance of surrender of the license for the project is appropriate, as hereinafter provided.

The Commission orders:

Surrender of the license for Project No. 204 is hereby accepted, effective as of November 24, 1964, subject to the payment of annual charges through said date in the amount of $93.92.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

IDAHO POWER COMPANY, DOCKET NO. E-7194

ORDER AUTHORIZING THE ISSUANCE OF COMMON STOCK

(Issued January 15, 1965)

Idaho Power Company (Applicant), incorporated under the laws of the State of Maine and doing business in the States of Oregon, Idaho and Nevada, with its principal business office at Boise, Idaho, filed an application on November 25, 1964, as supplemented on December 21, 1964 and January 4, 1965, for an order pursuant to Section 204 of the Federal Power Act authorizing the issuance of up to 250,000 shares of Common Stock par value $5 per share. Applicant requests that the proposed issuance and sale of Common Stock be given an exemption from the Commission's competitive bidding requirement.

The proposed shares of Common Stock will be offered publicly on or about January 26, 1965 at the last reported sale price of Applicant's Common Stock on the New York Stock Exchange immediately prior to the date of offering. Applicant proposes to enter into an underwriting agreement for the sale and the issue of Common Stock with the underwriting firm of Kidder, Peabody & Co., which agrees to underwrite the issue for a fee, subject to market conditions at the time of offering of $0.70 per share. The aforementioned fee represents the lowest cost of underwriting the contemplated issue on the basis of three proposals submitted to Applicant by underwriting firms. By letter dated November 20, 1964 (Docket No. IN-967), the Commission, pursuant to Section 34.2(k)(2)(ii) of its regulations under the Federal Power Act authorized Applicant to enter into negotiations for the underwriting or sale of the proposed issuance of Common Stock. Applicant now requests that the proposed issuance be exempted from competitive bidding requirements of Sections 34.1a(b) and (c) of its regulations upon findings as set forth in Section 34.1a(a)(4) thereof.

According to the application, the net proceeds from the new shares of Common Stock will be almost $9,500,000 and will be used for payment in full of the principal amount of outstanding notes which were authorized by the Commission in its order issued February 24, 1964, Docket No. E-7144, 31 FPC 450. Applicant expects that the principal amount of short-term bank loans outstanding will total $7,100,000 at the time of issuance and sale of new shares of Common Stock.

Applicant states that the balance of the proceeds from the sale of the proposed securities to be issued will be used by the Applicant to finance in part its 1965 construction program.

Applicant estimates that its construction program for 1965 will be at a cost of $31,333,000. The largest item listed in the construction program for 1965 is $11,072,000 for continuation of construction of the Hells Canyon Development of Project No. 1971. Other outstanding items are as follows: transmission facilities, $6,048,000; substation facilities, $5,556,000; distribution lines and substations, $5,911,000.

Written notice of the application has been given to the Idaho Public Utilities Commission, the Nevada Public Service Commission, the Oregon Public Utility Commissioner, and to the Governor of each of those States. Notice was also published in the Federal Register on December 25, 1964 (29 F.R. 18439), stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest with the Federal Power Commission, Washington, D.C. 20426 on or before January 11, 1965. No protest or petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued November 7, 1959, *Idaho Power Company*, Docket No. E-6781 (18 FPC 603).

(2) The proposed issuance of Common Stock as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) There is no affiliation, direct or indirect, through directors, officers or stockholders, or the ownership of securities or otherwise between Applicant and the underwriting firm of Kidder, Peabody & Co.

(4) The fees proposed to be paid to Kidder, Peabody & Co. in connection with the proposed issuance of Common Stock do not appear to be unreasonable.

(5) Under the circumstances of this case, sufficient cause has been shown for exempting the proposed issuance of Common Stock from competitive bidding requirements of Sections 34.1a(b) and (c) of the Commission's Regulations under the Federal Power Act.

(6) Applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State commission within the meaning of Section 204(f) of the Act, and the proposed issuance of Common Stock, as described above, is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(7) The proposed issuance of Common Stock, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by Applicant of service as a public utility which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

The Commission orders:

(A) The proposed issuance of Common Stock, as described above, upon the terms and conditions and for the purposes specified in the application, is hereby authorized, subject to the provisions of this order.

(B) The proposed issuance and sale of Common Stock shall not be consummated until:

(i) Applicant shall have amended its application by filing with the Commission a verified copy of the underwriting agreement, as executed, between

Applicant and the aforementioned underwriters for the purchase or underwriting of the proposed issuance of Common Stock.

(ii) The Commission, by further order, shall have approved the price to be received by Applicant for the proposed Common Stock.

(C) This authorization shall expire unless the transactions hereby authorized are consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission.

(E) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect of any securities to which this order relates.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PACIFIC POWER & LIGHT COMPANY, DOCKET NO. E-7197

ORDER AUTHORIZING ISSUANCE OF PREFERRED STOCK

(Issued January 15, 1965)

Pacific Power & Light Company (Applicant), a corporation organized under the laws of the State of Maine and qualified to transact business in the States of Oregon, Wyoming, Washington, California, Montana and Idaho, with its principal business office in Portland, Oregon, filed an application on December 11, 1964, as supplemented on December 16, 1964, for authorization pursuant to Section 204 of the Federal Power Act to issue 100,000 shares of Serial Preferred Stock of the par value of $100 per share.

Applicant is engaged primarily in generating, purchasing, transmitting and distributing electricity in more than 240 communities in the States of Oregon, Wyoming, Washington, California, Montana and Idaho. Applicant's electric operations have accounted for approximately 97% of its operating revenues during the 12 months ending October 31, 1964.

The New Preferred Stock is proposed to be issued under and pursuant to the applicable provisions of the Applicant's By-laws, as heretofore amended, and as to be further amended by an appropriate amendment thereto creating a new series and fixing its distinctive characteristics. The new Preferred Stock will be entitled to cumulative dividends at a rate per annum to be fixed by competitive bidding. The holders thereof will be entitled to one vote for each share held together with certain additional voting privileges during any periods when preferred stock dividends may be in arrears. The new Preferred Stock will be subject to redemption at the initial offering price thereof (exclusive of accumulated dividends) plus a premium of $5 per share if redeemed on or prior to February 1, 1970, $3 per share if redeemed thereafter and on or prior to February 1, 1975, and $1 per share if redeemed thereafter.

Applicant proposes on or about January 15, 1965, to invite sealed written bids for the purchase of the 100,000 shares of new Serial Preferred Stock. Each bid may be made by a single bidder or by a group of bidders and must be for the purchase of all the shares of the New Preferred Stock. Bids must be submitted to the Applicant at Room 2033, Two Rector Street, New York, New York before 12:00 Noon, New York time, on January 26, 1965, and accompanied by deposits of $300,000. Each bid shall specify the dividend rate to be borne by the new Preferred Stock which rate shall be a multiple of 1/25 of 1%; and the price to be paid to the Applicant, which price shall not be less than $100 nor more than $102.75 per share. Unless the Applicant shall reject all bids or exclude a bid or bids for reasons set forth in the Statement of Terms and Conditions Relating to the Bids it will accept the bid which provides for the lowest cost of money.

Applicant proposes to apply the net proceeds from the sale of the new Preferred Stock to the redemption of 100,000 outstanding shares of its 5.64% Serial Preferred Stock at 107% of $100 par value per share, plus unpaid accumulated dividends to the date of redemption. According to the application, the amount required to redeem these shares, exclusive of dividends accumulated after December 31, 1964, is $10,700,000.

Written notice of the application has been given to the Public Utility Commissioner of Oregon, the Public Service Commission of Wyoming, the Utilities and Transportation Commission of Washington, the Public Utilities Commission of California, the Public Service Commission of Montana, the Public Utilities Commission of Idaho, and to the Governors of each of those States. Notice has also been given by publication in the Federal Register on December 22, 1964 (29 F.R. 18191), stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest on or before January 8, 1965, with the Federal Power Commission, Washington, D.C., 20426. No protest or petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission, as heretofore determined and set forth in the Commission's order issued April 24, 1958, *In the Matters of the California Oregon Power Company and Pacific Power & Light Company*, 19 FPC 573.

(2) The proposed issuance of Preferred Stock, all as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) The proposed issuance of Preferred Stock, as hereinafter authorized will be for a lawful object within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purposes.

(4) Applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State commission within the meaning of Section 204(f) of the Act; and the proposed issuance of Preferred Stock, as described above, is therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

The Commission orders:

(A) The proposed issuance of Preferred Stock, all as described above, upon the terms and conditions and for the purposes specified in the application, is hereby authorized subject to the provisions of this order.

(B) The proposed issuance and sale of Preferred Stock at competitive bidding shall not be consummated until:

> (i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements and Section 34.2(h) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the

Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.

(ii) The Commission, by further order, shall have approved the price to be received by Applicant for the proposed issuance of Preferred Stock and the dividend rate thereon.

(C) This authorization shall expire unless the transaction hereby authorized is consummated within 90 days from the date of the issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission.

(E) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any securities to which this order relates.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

BLACKSTONE GAS COMPANY, DOCKET NO. CP65-23

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued January 18, 1965)

On July 21, 1964, as amended on October 5, 1964, Blackstone Gas Company (Applicant) filed in Docket No. CP65-23 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Tennessee Gas Transmission Company (Tennessee) to establish physical connection of its transmission facilities with the proposed distribution facilities of Applicant and to sell natural gas to it for resale and distribution in the Towns of Blackstone and Bellingham located contiguous to each other in Worcester and Norfolk Counties, Massachusetts, respectively.

Applicant proposes to construct and operate a distribution system of 4-inch pipe approximately 21,000 feet long in the said Towns of Blackstone and Bellingham at an estimated cost of $106,625, which will be financed by bank loans of $100,000 and the balance from company funds.

The application shows the combined estimated third year annual and peak day requirements for the two towns and their environs to be 24,242 Mcf and 222 Mcf respectively.

Applicant has received appropriate authorizations from the Massachusetts Department of Public Utilities and from the respective municipalities.

On September 14, 1964, Tennessee Gas Transmission Company filed its answer to the application stating that it had no objection to providing the requested service to Applicant.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on November 18, 1964 (29 F.R. 15460). No protest or petition to intervene or notice of intervention has been filed in this proceeding.

The Commission finds:

(1) Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company"

within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of July 15, 1947, in Docket No. G–910 (6 FPC 777).

(2) Applicant, Blackstone Gas Company, is a public utility company organized and existing under the laws of the State of Massachusetts and is engaged in the business of distributing and selling natural gas within said State.

(3) It is necessary and desirable in the public interest that Tennessee be directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver to Applicant up to a maximum daily volume of 222 Mcf of natural gas per day as set forth in the application and as hereinafter ordered and conditioned.

(4) Applicant should be prepared to receive natural gas from Tennessee within one year from the date of issuance of this order.

(5) The requirement that Tennessee Gas Transmission Company serve Applicant, as proposed, will not place any undue burden upon nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Tennessee Gas Transmission Company be and it is hereby directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to deliver to Applicant up to a maximum daily volume of 222 Mcf of natural gas as hereinbefore described and as more fully described in the application.

(B) This order is conditioned that Applicant shall be prepared to receive natural gas from Tennessee, as proposed, within one year from the date of issuance of this order and that a service agreement shall be executed between Applicant and Tennessee in accordance with the Commission's Regulations under the Natural Gas Act.

(C) Tennessee Gas Transmission Company shall report to the Commission in writing the date of commencement of service to Applicant for service to the communities of Blackstone and Bellingham within 10 days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

MRS. ANNA HUBER, DOCKET NO. RI65–370

ORDER DENYING MOTION FOR RECONSIDERATION

(Issued January 18, 1965)

Mrs. Anna Huber (Huber) on December 28, 1964, filed a document styled a "Petition & Application for Reconsideration and Rehearing"[1] of the Commission's order issued December 9, 1964, which suspended the proposed increased rate of 26.0461¢ per Mcf, designated as Supplement No. 4 to Huber's FPC Gas Rate Schedule No. 1, for the sale of gas to Hope Natural Gas Company (Hope) from the Sardis Field, Harrison County, West Virginia. Huber's rate filing is unilateral in nature but Huber alleges the right to make the filing because of her letter dated October 30, 1964, to Hope purporting to terminate the contract which comprises her Rate Schedule No. 1. Hope on December 1, 1964, protested Huber's unilateral rate filing contending, among other things, that she had no right to terminate the contract. In the December 9 order Huber's proposed rate was suspended until May 10, 1965, and thereafter until such further time as it made effective in the manner prescribed by the Natural Gas Act. The order specifically set for hearing not only the question of the justness and reasonableness of Huber's rate but also the question of Huber's right to make the unilateral filing.

---

[1] An application for rehearing of an interlocutory order, such as involved here, may not properly be filed [Section 1.30(e) of the Commission's Rules of Practice and Procedure (18 CFR 1.30(e)]. The instant tender has been considered as a motion for reconsideration pursuant to Section 1.12 of the Commission's Rules of Practice and Procedure.

In support of her motion Huber claims, *inter alia*, that (1) her contract with Hope expired by reason of termination pursuant to the provisions thereof; (2) under *Sunray Mid-Continent* v. *F.P.C.*, 364 U.S. 137, a natural gas company has the power to make unilateral rate filing following termination of the contract; and (3) she should be given the opportunity to comply with the provisions of the Ninth Amendment to our Statement of General Policy No. 61-1, 32 FPC 422, which require that a contract must have a term of at least five years remaining in order for the provisions of the Seventh Amendment, 30 FPC 1370, to be applicable.

In the light of Hope's protest we considered it appropriate to include as an issue for hearing the right of Huber to make a unilateral filing, which, in turn, involves the right of Huber under her contract with Hope to terminate that contract. We shall not decide the unilateral filing issue until all parties to this proceeding have had the opportunity to offer evidence on whatever factual matters may be in dispute.

Huber's rate filing is not a settlement of the type permitted by the Seventh Amendment to the Policy Statement since no escalation clauses are being deleted from the contract. The Ninth Amendment merely requires a remaining contract term of five years for those contracts otherwise eligible for settlement under the Seventh Amendment.

The Commission orders:

For the reasons set forth above, Huber's motion for reconsideration filed on December 28, 1964, is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

THE JUPITER CORPORATION, DOCKET NO. RI63-212; TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP65-58

ORDER DENYING MOTION TO TERMINATE PROCEEDINGS

(Issued January 18, 1965)*

The Jupiter Corporation (Jupiter), on December 16, 1964, filed a motion to terminate the above-captioned proceedings. Long Island Lighting Company (Long Island), an intervener, and Staff Counsel filed Answers in opposition to Jupiter's motion on December 24 and December 28, 1964, respectively. Jupiter's motion is based on an offer of settlement which in effect is a proposal that the Commission issue the requested certificate to Tennessee Gas Transmission Company (Tennessee) in Docket No. CP65-58 and declare moot the investigation of Jupiter's rates in Docket No. RI63-212.

We consolidated these proceedings for the reason that the Commission's decision as to whether Tennessee's proposal to lease and operate Jupiter's transportation facilities in the Rollover Field, Louisiana, is in the public interest depends to a great extent upon our determination of a lawful rate in Jupiter's rate proceeding.[1]

---

*Rehearing denied February 15, 1965, 33 FPC 213.

Jupiter, in support of its motion, urges that the lease proposal is wholly in the public interest, since it provides significant operating and negotiating benefits to Tennessee, while granting substantial cost reductions to Tennessee and causing no harm to any interest involved. Jupiter states that the lease arrangement will enable Tennessee to schedule and balance its takes from the Rollover Field by direct dealings with producers, and to acquire possible further gas reserves in the area. Jupiter further states that the lease proposal will result in annual savings to Tennessee of $225,000 based on a comparison of the annual rental fee of $1,200,000 with Jupiter's charges to Tennessee in 1963 reflected by its current transportation rate. That these savings would have amounted to $380,000 annually based on 1962 volumes and that if Jupiter's existing facilities in the Rollover Field had been used to capacity during those years Tennessee's savings under the lease proposal would have ranged from $980,000 to $1,090,000 per year. Staff, on the other hand, contends that the lease rental fee would be about $970,000 in excess of Jupiter's charges to Tennessee in 1963 as reflected by the rate Staff proposes in its cost of service evidence served on the parties on December 8, 1964.

Jupiter further contends that its transportation rate cannot be based on a pure cost of service standard but should be fixed on the basis of the totality of its Gas Gathering Oil and Gas Division operations as an independent producer and that the unit cost per Mcf to Tennessee reflected by the rental fee is not out of line with charges for natural gas gathering operations in various areas. It is Staff's position that Jupiter's transportation rate can and should properly be fixed on a cost of service basis because Jupiter produces no gas in the Rollover Field and its transportation operation therein is a pipeline function and not a gathering operation under the Commission's holding in *Ben Bolt Gathering Company*, 26 FPC 825, affirmed in *Ben Bolt Gathering Company* v. *F.P.C.*, 323 F. 2d 610.

These contentions raise serious questions as to the proper basis on which Jupiter's transportation rate should be fixed. Jupiter's proposal would result in the Commission's summary disposal of these proceedings without consideration of the contentions advanced and evidence proposed by Staff.

Long Island, in its answer, contends that Jupiter's motion, though purporting to offer a plan of settlement, is in fact nothing more than a belated request that the Commission reconsider and reverse its order issued October 30, 1964, consolidating these proceedings. As such Long Island opposes it on the grounds that it presents no new material fact or argument not already considered by the Commission and seeks to avoid what it says the Commission has correctly held to be the crucial consideration in this case, that is the comparison of the lease rental charge and Jupiter's just and reasonable transportation rate. Both Long Island and the Staff cite the Commission's holding in the consolidation order that a comparison of the proposed annual rental fee with Tennessee's purchased gas costs can be properly made only after the Commission's determination of a just and reasonable transportation rate for Jupiter in Docket No. RI63-212. Long Island further states that to the extent that Jupiter's motion is intended as an offer of settlement it is unacceptable to it.

Our holding that a decision in the certificate proceedings depends upon our determination of the just and reasonable rate in Jupiter's rate investigation is founded upon our concern as to whether the proposed lease arrangement would operate in a way which would have an adverse effect on consumers. We held this to be one of our basic considerations in determining whether the issuance of a certificate to Tennessee is in the public interest. Jupiter's motion would not permit such consideration.

---

[1] Order issued October 30, 1964.

Jupiter declares that its offer of settlement is acceptable to all parties affected thereby. Its statement is incorrect because Long Island, intervener in these proceedings, stated in its answer that Jupiter's offer of settlement is unacceptable to it.

In view of the differences in the positions of the parties on the issues in these proceedings, as indicated above, and the objection of intervenor Long Island to Jupiter's offer of settlement, Jupiter's motion to terminate these proceedings on the basis of its settlement offer should be denied. These proceedings should therefore be expedited in accordance with the procedures for formal hearing previously ordered.

The Commission orders:

Jupiter's motion to terminate the proceedings in Docket Nos. RI63-212 and CP65-58 filed December 16, 1964, is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SUN OIL COMPANY, DOCKET NO. CI65-427

ORDER DENYING APPLICATION FOR REHEARING

(Issued January 18, 1965)

On December 21, 1964, Sun Oil Company (Sun) in Docket No. CI65-427, filed an application for rehearing of the Commission's letter-order of November 19, 1964, 32 FPC 1341, which rejected Sun's application for a certificate of public convenience and necessity and its related gas purchase contract because the contract contains pricing provisions other than those permitted by Section 154.93 of the Commission's Rules and Regulations under the Natural Gas Act.

Sun does not maintain that its contract provisions comply with the regulations but rather contends that Section 154.93 is unlawful, unreasonable and arbitrary. Sun primarily argues that by proscribing the particular type of indefinite pricing provision contained in its contract, the Commission's regulation does not permit producers ". . . even an opportunity of 'keeping the intake and outgo of their revenues in proper balance'." Sun completely overlooks the fact that Section 154.93 permits changes in price to any specific amount provided it is at a definite date. We have determined that indefinite pricing provisions of the nature contained in Sun's contract are not in the public interest and our conclusion has been sustained by the Supreme Court. *F.P.C.* v. *Texaco Inc.*, 377 U.S. 33 (1964).

The Commission finds:

The assignments of error and grounds for rehearing set forth in Sun's application present no new facts or principles of law which were not considered by the Commission when it issued its letter-order of November 19, 1964, or which now having been considered, warrant any change or modification of said order.

The Commission orders:

The application for rehearing filed by Sun Oil Company on December 21, 1964, is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP65-88

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 18, 1965)

On October 1, 1964, United Gas Pipe Line Company (Applicant) filed in Docket No. CP65-88 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities for the transportation of natural gas in interstate commerce to Stanton Prestressed Concrete Products, Division of Service Construction Company, Inc. (Stanton) located near Bryam, Hinds County, Mississippi, all as more fully set forth in the application.

Applicant proposes to construct and operate 400 feet of 2-inch pipeline to connect with its existing 2-inch lateral in Hinds County, and to construct and operate a meter and regulator station and appurtenant facilities in order to deliver and sell natural gas to Stanton. Stanton's fuel requirements are estimated to be 80 Mcf on a maximum day and 24,800 Mcf on an annual basis during the third year of operation.

Stanton will use the natural gas for boiler fuel to produce steam for utilization in the drying and curing of precast concrete products and other miscellaneous uses.

The total estimated cost of the subject facilities is $3,658, which will be financed out of Applicants' current working funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 15, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record finds as hereinafter stated.

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G-232 (3 FPC 863).

(2) The proposed construction and operation of facilities and delivery of natural gas by Applicant to Stanton as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and delivery of natural gas are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas

Act, and particularly the general terms and conditions set forth in Paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) The certificate issued hereinafter should not entitle Stanton to whom firm deliveries are authorized hereinafter to any priorities or rights to additional gas for meeting any future increases in its requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to the Applicant in this proceeding, authorizing the construction and operation of facilities and the transportation and delivery of natural gas to Stanton as more fully described in the application and exhibits in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations, within 120 days of the date on which this order issues.

(D) This certificate shall not entitle Stanton to whom firm deliveries are authorized herein to any priorities or rights to additional gas for meeting any future increases in its requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

ALGONQUIN GAS TRANSMISSION COMPANY, DOCKET NO. CP65-63

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued January 19, 1965)

On September 3, 1964, Algonquin Gas Transmission Company (Applicant), Boston, Massachusetts, filed in Docket No. CP65-63, as supplemented on October 12, 1964, an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon certain facilities and for a certificate of public convenience and necessity authorizing the construction and operation of other facilities, all as more fully set forth in the application, as supplemented, on file with the Commission.

Applicant seeks authorization to relocate approximately two miles of its lateral pipeline J-1 in Lexington, Massachusetts by abandoning in place approximately two miles of the existing 26-inch lateral pipeline and constructing approximately two miles of 30-inch pipeline to enable it to more economically serve its expanding markets in the future.

Applicant further states that the proposed relocation is necessary because it is within the existing Massachusetts State Route 2 Highway right-of-way on a revocable permit from the State of Massachusetts and that it has been notified by the Massachusetts Department of Public Works that a portion of this route in Lexington, Massachusetts is scheduled to be regraded, widened and improved commencing in the fall of 1964.

The total estimated cost of the relocation is $628,000. Applicant will be reimbursed approximately $15,000 by the Commonwealth of Massachusetts, and will finance the remaining costs with current funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application, as amended, has been filed.

At a hearing held on January 15, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Algonquin Gas Transmission Company, a Delaware corporation having its principal place of business in Boston, Massachusetts, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of February 26, 1951, in Docket No. G-1319 (10 FPC 35).

(2) The facilities hereinbefore described, as more fully set forth in the application, as supplemented, in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) The facilities to be abandoned, as heretofore described, are subject to the jurisdiction of the Commission and abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(7) Such abandonment by Applicant, as heretofore described, is permitted by the public convenience and necessity and an order authorizing and approving same should be issued as hereinafter ordered.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Algonquin Gas Transmission Company, to construct and operate the proposed facilities, as hereinbefore described, all as more fully set forth in the application, as supplemented, herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date on which this order issues.

(D) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, be and the same are hereby granted.

(E) Applicant shall advise the Commission of the date of said abandonment within 10 days of the date thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

DORCHESTER GAS PRODUCING COMPANY, DOCKET NOS. RI64-749, G-18671 AND RI60-11

ORDER DENYING MOTION FOR RECONSIDERATION

(Issued January 19, 1965)

Dorchester Gas Producing Company (Dorchester) on December 18, 1964, filed a document styled an "application for rehearing"[1] of the Commission's order issued November 19, 1964, 32 FPC 1339, denying its request for an investigation to determine the justness and reasonableness of all of Dorchester's jurisdictional rates, including those involved in suspension proceedings in Docket Nos. G-18671 and RI60-11. Dorchester sought, among other things, an investigation under Section 5(a) into the justness and reasonableness of Dorchester's contract rate under its Rate Schedule No. 2 for the sale of gas to Natural Gas Pipeline Company of America (Natural). We pointed out in the November 19 order that Docket Nos. G-18671 (Rate Schedule No. 1) and RI60-11 were involved in the Hugoton-Anadarko area proceeding in Docket No. AR64-1 and that Dorchester's Rate Schedule No. 2 was also involved in the Section 5(a) aspects of that area proceeding. Dorchester's two important sales (Rate Schedule Nos. 1 and 2) are thus involved in the Hugoton-Anadarko proceedings. We also noted that any relief Dorchester might receive under Section 5(a) for its sale to Natural in an individual hearing would be only applicable prospectively until such time as the Commission renders a decision in Docket No. AR64-1.

In support of its motion Dorchester contends, *inter alia*, that (1) it cannot receive the relief it needs from its allegedly unreasonably low contract rate of 7.1463¢ per Mcf for the sale to Natural in the area rate proceeding; (2) decision in the area proceeding will be long delayed thus denying it relief; and (3) the Commission has discriminated against it by not setting this matter for separate hearing when viewed against the background of Commission's action in setting matters for hearing when dealing with increased rates which would cause wholesale triggering of other producer rates in a given area if the increased rate were permitted to go in effect subject to refund.

In arguing that it will not receive any relief in the area proceeding under Section 5(a) with respect to its sale to Natural, Dorchester assumes that we do not have the power in such a proceeding to grant any relief under Section 5(a) to which a party may be entitled. We are unwilling to make any such assumption. The very questions raised here by Dorchester as to action under the *Sierra*[3] doctrine to relieve producers of low fixed price contracts are involved in the Permian Basin area rate proceeding in Docket No. AR61-1, which is now pending before us on exceptions to the examiner's decision. Such questions will, no doubt, also be raised in the Hugoton-Anadarko proceeding. In the area proceeding Dorchester will receive full consideration of its claims to relief under Section 5(a).

---

[1] An application for rehearing with respect to Commission action on a discretionary matter, such as involved here under Section 5(a) of the Act, may not properly be filed [Section 1.30(e) of the Rules of Practice and Procedure (18 CFR 1.30(e)]. The instant tender has been considered as a motion for reconsideration pursuant to Section 1.12 of the Commission's Rules of Practice and Procedure.

Dorchester suggests that decision in the area proceeding will not be reached for many years, while a final decision in the individual hearing requested by Dorchester could be made in a matter of six months. Aside from the question of the accuracy of Dorchester's prediction, we believe that the novel and intricate question of the circumstances, if any, in which producers should be permitted to seek rates higher than those permissible under their contracts with a pipeline lend themselves at least initially to an area proceeding where we can evaluate the effect of one such action upon other sales agreements in the area.

As Dorchester points out, we have set a number of cases involving producer increased rates for individual hearing subsequent to the institution of area rate proceedings. These cases involved situations where other producer rates in the area would be triggered in the event the producer rate increases set for hearing were to go in effect subject to refund, and where such triggering might involve millions of dollars in higher purchased gas costs. In these circumstances it was incumbent upon us to take the extraordinary action of setting these matters for separate formal hearing. The situation here does not present compelling circumstances of the triggering cases.

The Commission orders:

For the reasons set forth above, Dorchester's motion for reconsideration is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NOS. G-17849, CP63-207 AND CP64-292

ORDER AMENDING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 19, 1965)

On October 28, 1964, El Paso Natural Gas Company (El Paso) filed a petition, pursuant to the Natural Gas Act and the regulations thereunder, for amendment of certificates of public convenience and necessity issued in Docket Nos. G-17849, CP63-207 and CP64-292 on June 19, 1963, 29 FPC 1175, April 15, 1963, 29 FPC 742, and July 31, 1964, 32 FPC 474, respectively, all as more particularly described in said petition which is on file with the Commission.

In Docket No. G-17849, El Paso requests that it be permitted to substitute three used 165 horsepower compressor units at the Beaver Compressor Station in lieu of the single 440 horsepower unit authorized therein; in Docket No. CP63-207, requests authorization to use a 2,400 horsepower compressor unit at its existing Blanco Compressor Station in lieu of a 2,500 horsepower unit authorized to be constructed and operated therein; and in Docket No. CP64–292, to substitute Arizona Public Service Company as its customer for sale and distribution to domestic and irrigation customers by means of the authorized Aravaipa Canyon tap in lieu of Southwest Gas Corporation originally authorized therein.

---

[3] *F.P.C. v. Sierra Pacific Power Co.*, 350 U.S. 348.

El Paso alleges that savings under estimated costs in Docket Nos. G–17849 and CP63–207 would amount to $126,930 with no appreciable diminution in design capacity.

Due notice of the filing of the petition to amend and opportunity for hearing thereon has been given by publication in the Federal Register on December 29, 1964 (29 F.R. 18527). No protest or petition to intervene or request for hearing has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission orders issued June 19, 1963, April 15, 1963, and July 31, 1964 in Docket Nos. G–17849, CP63–207 and CP64–292, respectively, be amended as hereinafter ordered.

The Commission orders:

(A) The certificates of convenience and necessity issued to El Paso in the Commission orders of June 19, 1963, accompanying Opinion No. 390 in Docket No. G–17849; of April 15, 1963, in Docket No. CP63–207; and of July 31, 1964, in Docket No. CP64–292 be and the same are hereby amended so as to authorize the changes El Paso requests as is more particularly described in the aforementioned petition which is on file with the Commission.

(B) In all other respects the orders in Docket Nos. G–17849, CP63–207 and CP64–292 shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

FLORIDA GAS TRANSMISSION COMPANY AND TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. CP65–124

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT

(Issued January 19, 1965)

On November 5, 1964, Florida Gas Transmission Company (Florida Gas), and Texas Eastern Transmission Corporation (Texas Eastern) filed in Docket No. CP65–124 a joint application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon certain facilities and for a certificate of public convenience and necessity authorizing the operation of certain facilities, all as more fully set forth in the application.

Florida Gas and Texas Eastern seek authorization (1) to operate an emergency interconnection between the pipeline systems of the two companies (facilities proposed to be so operated are presently in existence, located in Matagorda County Texas) and in the event of an emergency to exchange natural gas, and (2) to remove the interconnecting facilities in Brazoria County.

By order of the Commission issued June 21, 1963, in Docket No. CP61–302, 29 FPC 1243, authorization was granted for the operation of said facilities, and for metering and regulating facilities located in South Alvin Field, Brazoria County, Texas, for the sale and delivery of natural gas by Florida Gas to Texas

Eastern up to a maximum of 13,292,573 Mcf until June 30, 1963, when such authorization terminated.

At a hearing held on January 15, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Florida Gas Transmission Company, a Delaware corporation having its principal place of business in Winter Park, Florida, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of July 3, 1963, in Docket No. CP63-277 (30 FPC 27).

(2) Applicant, Texas Eastern Transmission Corporation, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 30, 1949, in docket No. G–1089 (8 FPC 228).

(3) The proposed exchange and delivery of natural gas between Florida Gas and Texas Eastern, the operation of facilities, and the transportation of natural gas in interstate commerce, as hereinbefore described and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The aforesaid proposed exchange and delivery of natural gas, operation of facilities and transportation of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) The facilities proposed to be abandoned by Applicants, as hereinbefore described and as more fully described in the application filed in this proceeding, are used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(6) The proposed abandonment of the aforesaid facilities in Brazoria County, Texas, is permitted by the public convenience and necessity and permission and approval therefor should be granted as hereinafter ordered.

(7) Florida Gas and Texas Eastern are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(8) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Florida Gas' and Texas Eastern's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby jointly issued to Florida Gas and Texas Eastern in this proceeding authorizing the exchange and delivery of natural gas, the operation of facilities, and the transportation of natural gas in interstate commerce, as hereinbefore described, all as more fully described in the application and exhibits filed in this proceeding upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder is hereby conditioned upon Florida Gas' and Texas Eastern's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) Permission for and approval of the abandonment by Florida Gas and Texas Eastern of the facilities hereinbefore described, as more fully described in the application in this proceeding, are hereby granted.

(D) Florida Gas and Texas Eastern shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (C) above within ten days of such abandonment.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

THE MANUFACTURERS LIGHT AND HEAT COMPANY, DOCKET NO. CP65–84; TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. CP65–85

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 19, 1965)

On September 30, 1964, The Manufacturers Light and Heat Company (Manufacturers) filed in Docket No. CP65–84, and Texas Eastern Transmission Corporation (Texas Eastern), filed in Docket No. CP65–85, their respective applications pursuant to Section 7 of the Natural Gas Act for certificates of public convenience and necessity authorizing the construction and operation of facilities, the sale and delivery of natural gas, and modification of Commission orders, all as more fully set forth in the applications.

Manufacturers proposes to provide an additional delivery point for the sale and delivery of a volume of natural gas to United Gas Improvement (UGI) ranging from 46,800 Mcf annually in 1965 to 74,300 Mcf annually in 1969, for resale in the Borough of Bally, Pennsylvania, and surrounding area.

Texas Eastern proposes (1) to construct and operate measuring and regulating facilities on its 30-inch Penn-Jersey pipeline at a delivery point in Berks County, Pennsylvania, and make additional deliveries to UGI for the account of Manufacturers, (2) to increase its maximum daily deliveries of natural gas to the City of Pulaski, Tennessee by 600 Mcf, (3) reduce and convert the maximum daily quantity of firm gas allocated to the City Gas Company of New Jersey (City Gas)[1] from 4,000 Mcf daily under Rate Schedule SGS–D to 1,260 Mcf daily under Rate Schedule GS–D and 840 Mcf daily under Rate Schedule WS for a total reduction of 1,900 Mcf, and (4) reduce the volume of gas authorized to be sold to Equitable Gas Company by the amount contracted for by Waynesburg Home Gas Company prior to the merger of Waynesburg with Equitable, *i.e.*, 2,150 Mcf daily under Texas Eastern's Rate Schedule GS and of 330 Mcf daily under Texas Eastern's Rate Schedule WS for a total reduction to Equitable of 2,480 Mcf daily.

The cost of the measuring and regulating facilities to be constructed by Texas Eastern is estimated to be $27,000.00. Manufacturers will reimburse Texas for the cost thereof.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 15, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications and exhibits submitted in support of the authorizations, and upon consideration of the record finds and orders as hereinafter stated.

---

[1] Modification of the order of the Commission issued in Docket No. G–9784 on October 9, 1956, in connection with Opinion No. 296, authorizing an increase of Maximum Daily Quantity to City Gas Company of New Jersey under Texas Eastern's SGS–D Rate Schedule up to 4,000 Mcf daily (16 FPC 27, 51).

The Commission finds:

(1) Applicant, The Manufacturers Light and Heat Company, a Pennsylvania corporation having its principal place of business in Pittsburgh, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 29, 1944, in Docket No. G–593, *et al.* (4 FPC 821).

(2) Applicant, Texas Eastern Transmission Corporation, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 30, 1949, in Docket No. G–1089 (8 FPC 228).

(3) The proposed construction and operation of facilities, modifications of Commission orders and the sale of natural gas in interstate commerce, as hereinbefore described and as more fully described in the applications and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The aforesaid proposed construction and operation of facilities, modification of Commission orders and sale and delivery of natural gas and reduction in volume of deliveries to Equitable and City Gas are required by the public convenience and necessity and certificates therefor should be issued and orders modified as hereinafter ordered and conditioned.

(5) Manufacturers and Texas Eastern are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(6) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder be conditioned upon Manufacturers and Texas Eastern's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) Certificates of public convenience and necessity be and the same are hereby issued to Manufacturers and Texas Eastern in this proceeding, authorizing the sale and delivery of natural gas as hereinbefore described, and the construction and operation of facilities by Manufacturers and Texas Eastern, as more fully described in the applications and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificates issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized by paragraph (A) above shall be constructed and placed in operation within 12 months from the date on which this order issues.

(D) The Commission order issued October 9, 1956, in Docket No. G–9784 in connection with Opinion No. 296, be and the same is hereby modified so as to reduce authorized sales to City Gas in the amount of 1,900 Mcf daily, as proposed by Texas Eastern.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NORTHERN NATURAL GAS COMPANY, DOCKET NOS. G–17485, G–17486;[1] TOWN OF MANILLA, IOWA, RP64–46; NORTHERN NATURAL GAS COMPANY, CP64–255 (PHASE II); MICHIGAN CONSOLIDATED GAS COMPANY, CP65–38; MICHIGAN WISCONSIN PIPE LINE COMPANY, CP65–39

ORDER DENYING MOTION FOR CONTINUANCE OF HEARING IN DOCKET NO. G–17485, ET AL., BUT GRANTING ALTERNATIVE RELIEF

(Issued January 19, 1965)

On December 10, 1964, Minneapolis Gas Company (Minnegasco) filed in the proceeding in Docket No. G–17485, *et al.*, a motion requesting that the hearing scheduled to commence therein on January 26, 1965, be continued to March 2, 1965, in order that Minnegasco's limited personnel may be able to participate in the hearing in Docket No. G–17485, *et al.*, as well as the separate hearing in Docket No. CP64–255, *et al.*, which is also scheduled to commence January 26, 1965. Minnegasco claims that the continuance requested in Docket No. G–17485, *et al.*, is necessary in order to eliminate the conflict in the hearing date of January 26, 1965, which is common to both proceedings.

Since the proceeding in Docket No. CP64–255, *et al.*, may involve many issues and parties, Minnegasco assumes that the hearing in that proceeding will not be completed before March 2, 1965, and therefore Minneapolis requests that the commencement date of the hearing in Docket No. G–17485, *et al.*, be continued approximately five weeks so that the hearing in Docket No. CP64–255, *et al.*, may be completed prior to the commencement of the hearing in Docket No. G–17485, *et al.*

On December 10, 1964, Iowa Power and Light Company filed a telegram in support of Minnegasco's motion for continuance of the hearing in Docket No. G–17485, *et al.*

On December 14, 1964, the Emmetsburg Municipal Gasworks (Gasworks) filed an answer in opposition to Minnegasco's motion for continuance stating that Gasworks will incur about $1,500 of additional expense if the continuance is granted and that the continuance would work extreme hardships on Gasworks' witnesses and attorney who have already made arrangements to be in Washington, D.C., on January 26, 1965.

On December 16, 1964, the Towns of Cascade, Manilla, and Woodbine, Iowa, jointly filed an answer in opposition to the granting of Minnegasco's motion for continuance. They aver that the position taken by Northern Natural Gas Company (Northern) as to the imposition of overrun penalties makes it important that a decision be reached on their requests to reduce contract demands as soon as possible. They state that Northern has informed them that they will be charged the overrun penalty rate for any gas used above the reduced contract demand volumes they are seeking in Docket No. G–17485, *et al.*, if such gas is taken on any day when Northern has curtailed its customers to taking only the contract demand volumes provided for in their service agreements. They state that if their requests for reduction of contract demands are granted, they will not be injured because Northern has agreed to refund the difference in revenues between their purchasing the third-year contract demand volumes now in effect and the reduced contract demands they are seeking. However, if their requests for reduction are denied, they contend that in the meantime (by curtailing interruptibles to avoid the possibility of having to pay overrun penalties) they will have lost the revenues which otherwise would have been available from making sales to interruptible customers by use of gas from that portion of their contract demands which is not needed for firm service but which they are actually buying until such time as their requests to reduce contract demands have been acted upon by the Commission.

---

[1] The listing in the caption of this order of Docket Nos. G–17485, G–17486, and RP64–46 with Docket No. CP64–255, *et al.*, is *not* to be interpreted as a consolidation of the hearing in Docket No. G–17485, *et al.*, with the entirely separate proceeding in Docket No. CP64–255, *et al.*

Minnegasco admits in its motion for continuance that it is only estimating that the hearing in Docket No. CP64–255, *et al.*, will be concluded within a period of five weeks. If the hearing in Docket No. CP64–255, *et al.*, should not be completed by March 2, 1965, the hearing in Docket No. G–17485, *et al.*, would presumably have to be delayed again in order to prevent a conflict in hearings pending the final completion of the hearing in Docket No. CP64–255, *et al.* As compared with the issues in the proceeding in Docket No. CP64–255, *et al.*, the issues in Docket No. G–17485, *et al.*, appear to be extremely limited in scope and it would seem that the hearing in Docket No. G–17485, *et al.*, should not require more than five hearing days from commencement to conclusion. Therefore, we shall deny Minnegasco's motion for continuance of the hearing in Docket No. G–17485, *et al.*, and instead, grant the alternative relief of continuing the commencement of the hearing in Docket No. CP64–255, *et al.*, to February 2, 1965, thereby allowing a period of five full hearing days in which to permit the hearing in Docket No. G–17485, *et al.*, to be concluded prior to the new date to be fixed for the commencement of the hearing in Docket No. CP64–255, *et al.*

The Examiner in Docket No. G–17485, *et al.*, may provide for longer than normal hearing days if it appears that the hearing in Docket No. G–17485, *et al.*, cannot be completed within the five-day period provided for herein. In any event, the hearing in Docket No. CP64–255, *et al.*, shall go forward on February 2, 1965, even if the hearing in Docket No. G–17485, *et al.*, has not been concluded by that time.

The Commission finds:

(1) Minnegasco's motion for continuance of the hearing in Docket No. G–17485, *et al.*, to March 2, 1965, should be denied because good cause has not been shown for delaying the commencement of the hearing in Docket No. G–17485, *et al.*, for a period of approximately five weeks.

(2) Commencement of the hearing in Docket No. CP64–255, *et al.*, should be continued to February 2, 1965, in order to eliminate the conflict in hearing dates between the hearing in Docket No. G–17485, *et al.*, and the hearing in Docket No. CP64–255, *et al.*

The Commission orders:

(A) Minneapolis Gas Company's motion for continuance filed December 10, 1964, in Docket No. G–17485, *et al.*, is hereby denied.

(B) The commencement date for the hearing in Docket No. CP64–255, *et al.*, is hereby continued to February 2, 1965.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP65-116

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT

(Issued January 19, 1965)

On October 28, 1964, Northern Natural Gas Company (Applicant) filed in Docket No. CP65-116 an application pursuant to Subsections (b) and (c) of Section 7 of the Natural Gas Act, for permission and approval to abandon two 1,800 horsepower units no longer required at the Andrews Compressor Station located in Andrews County, Texas, and for a certificate of public convenience and necessity authorizing it to install and operate these two units in the Florey Station of the Applicant located on the Permian system.

Applicant states that because of declining volumes of gas coming into the Andrews Station the two units above mentioned are not needed there but that such units are required at the Florey Station to insure proper maintenance of service and to permit overhaul of the equipment without interruption of service during such periods.

The estimated cost of the proposed removal and reinstallation of the facilities is $685,200, which includes $314,300 for materials and equipment to be transferred from the Andrews Station, which said cost will be financed from cash on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the motion to amend has been filed.

At a hearing held on January 15, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence including the motion to amend filed on October 28, 1964, and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware Corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-280 (3 FPC 967).

(2) The facilities hereinbefore described are to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission and the installation and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The installation and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in Paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) Public convenience and necessity at present or in the future do not require the maintenance or operation of those two compressor units hereinbefore

described. Therefore permission and approval of the proposed abandonment by Applicant should be allowed.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Northern Natural Gas Company, to install and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such regulations.

(C) The facilities hereby authorized shall be completed and placed in operation not later than January 1, 1966, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations aforesaid.

(D) Permission for and approval of the abandonment by Applicant of the pipeline facilities hereinbefore described and as more fully described in the application, in this proceeding, be and the same are granted.

(E) Applicant shall advise the Commission of the date of removal of those facilities and the date of their installment within 10 days of such removal and such installment respectively.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP65-121

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 19, 1965)

On November 4, 1964, Northern Natural Gas Company (Applicant) filed in Docket No. CP65-121 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain measuring, regulating and appurtenant facilities to establish a new delivery point for Peoples Natural Gas Division of Applicant's natural gas system for use in making delivery of natural gas to the Dekalb Agricultural Association to be consumed in its new plant near Dumas, Moore County, Texas, all as more fully described in the application above mentioned.

The estimated cost of the proposed facilities is $3,570, which Applicant will finance from funds on hand.

Applicant proposes to sell and deliver peak-day volumes up to 295 Mcf on a firm basis to Dekalb Agricultural Association for various uses in the Association's plant, as above stated.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 15, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act as found by the Commission in its order of April 6, 1943, in Docket No. G–280 (3 FPC 967).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Northern Natural Gas Company, to construct and operate facilities and to deliver natural gas in interstate commerce as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) This certificate shall not entitle Dekalb Agricultural Association, to whom firm deliveries of gas are authorized herein to any priorities or rights to additional gas for meeting any future increases in its requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increase in their requirements.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SOUTH GEORGIA NATURAL GAS COMPANY, DOCKET NO. CP64–110

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 19, 1965)

On November 25, 1964, South Georgia Natural Gas Company (Applicant) filed an application in Docket No. CP64–110 for permission and approval to abandon by sale an additional segment of its facility referred to as its Line No. 7, located in the city limits of Dawson, Georgia, and used to deliver natural gas to the City of Dawson, all as more fully set forth in the application.

Heretofore on January 16, 1964, 31 FPC 148, the Commission issued an order in the subject docket authorizing the Applicant to abandon by sale a portion of its facility (Line No. 7) to the City of Dawson, Georgia. Said muncipality seeks to acquire the additional 1572 feet of pipeline and to have the Applicant move its meter and regulating station 1572 feet easterly along the Line No. 7 so as to be located on the boundary line outside the city limits to allow for the development of a new section of the city and to allow for paving a street over the course of the segment of said pipeline.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on December 16, 1964 (29 F.R. 17858). No protest, petition to intervene, notice of intervention or request for hearing has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order of January 16, 1964, in Docket No. CP64–110 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued on January 16, 1964 in Docket No. CP64–110 be and the same is hereby amended by permitting and approving the abandonment by Applicant of an additional 1572 feet of pipeline described as Line No. 7 located in the city limits of Dawson, Georgia, and by authorizing the relocation of the meter and regulating station at a point outside the city boundaries, all as more fully set forth in the application.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

AREA RATE PROCEEDING, ET AL. (HUGOTON-ANADARKO AREA), DOCKET NO. AR64–1, ET AL.; AREA RATE PROCEEDING, ET AL. (TEXAS GULF COAST AREA), DOCKET NO. AR64–2, ET AL.

ORDER DENYING MOTIONS FOR RECONSIDERATION AND CLARIFYING ORDER

(Issued January 22, 1965)

On December 24, 1964, The Atlantic Refining Company and seventeen other respondents filed an "Alternative Motion for Reconsideration or Clarification," and on December 28, 1964, Hunt Oil Company and fourteen other respondents filed an "Application for Rehearing and Reconsideration," both with respect to our Order Prescribing Procedure issued November 27, 1964. The staff filed an answer on January 4, 1965. In our order of November 27, 1964, 32 FPC 1373, we directed the examiners in the above proceedings to induce the parties to incorporate evidence by reference to the records in the prior area proceedings, AR61–1, AR61–2, and to hold joint prehearing conferences and joint hearing sessions, and we prescribed May 15, 1965, as the date for submitting all evidence proposed other than cost evidence derived from the questionnaires circulated to the producers and rate design evidence. Oklahoma Independent Petroleum Association (OIPA), *et al.*, on January 15, 1965, filed a motion for clarification or reconsideration of the order of November 27, 1964. OIPA points out that cost data collected by private parties utilizing FPC Form No. 20 pursuant to our order herein of November 4, 1964, has not been specifically excluded from the May 15, 1965, data for submission of evidence. We shall so provide.

The arguments of the producers with respect to continuing with these proceedings have already been answered in our November 27, 1964, order, and need not be considered further.

The producers suggest many difficulties in incorporation by reference of evidentiary material. These objections are premature, for we have provided opportunity to explore the feasibility of incorporation by reference before the examiners, who have called a joint prehearing conference on January 26, 1965, to consider this matter among others. We are aware that incorporation presents difficulties but they must be considered in light of the time and expense involved in retrying issues on which a full record has already been made. We expect all parties to cooperate in efforts to overcome the difficulties so that an expensive and time-consuming retrial of many issues can be avoided. Accordingly, we have directed the examiners to use every effort to work with the parties in attempting to resolve the problem of incorporation in the public interest and to report to us if progress is not made where incorporation would be feasible and non-prejudicial if the parties would cooperate.

Atlantic, *et al.*, points out that there is considerable evidence related to the cost phase of the case which is not directly derived from the cost questionnaires yet should be submitted with the cost phase. The motion mentions rate of return evidence by way of illustration. While it is true that return on investment is a component in cost studies, it is separately derived in almost all instances and such evidentiary presentations should not be delayed pending the unrelated development of the remaining cost components. Moreover, our experience alerts us to the fact that this evidence typically requires long periods of cross-examination which, of course, should be commenced at the earliest possible date. In this connection, we note that some nonassociated gas cost studies presented in prior proceedings (and possibly again in these) do not depend primarily upon questionnaire data. These data have been in the Commission's public reference room since they were filed and accordingly have been continuously available to the parties to these proceedings as well as the public generally. We are of the view, therefore, that only cost exhibits which are primarily dependent upon data derived from the all areas questionnaire or data derived from the utilization by private parties of FPC Form No. 20 should be deferred beyond May 15, 1965. As we stated in our November 27, 1964, order, other presentations should be made on May 15, 1965.

Arguments addressed by Hunt and OIPA to our not issuing a report form to small producers are not appropriate here. On November 4, 1964, 32 FPC 1266, we issued our order declining to issue such a report form and denied reconsideration by our order issued December 29, 1964, 32 FPC 1536. OIPA's further request that we make provision now for exhibits aimed at the "justification * * * of the rate of individual producers" is denied for the reasons outlined heretofore in our "Order Denying Motions For Reconsideration," issued January 30, 1964, *Area Rate Proceeding*, *et al.*, Docket No. AR64-1, *et al.*, 31 FPC 197.

The Commission finds:

The assignments of error and grounds for reconsideration set forth in the motions of Atlantic, *et al.*, Hunt, *et al.*, and OIPA, *et al.*, filed in this proceeding present no facts or legal principles which would warrant any change or modification in the Commission's order of November 27, 1964, except as hereinbefore indicated.

The Commission orders:

The motions for reconsideration filed by Atlantic, *et al.*, Hunt, *et al.*, and OIPA, *et al.*, are hereby denied, but the order of November 27, 1964, is hereby clarified as noted above.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

AREA RATE PROCEEDINGS, ET AL. (HUGOTON-ANADARKO AREA), DOCKET NO. AR64-1, ET AL.; AREA RATE PROCEEDINGS, ET AL. (TEXAS GULF COAST AREA), DOCKET NO. AR64-2, ET AL.

ORDER GRANTING REQUESTS FOR COPIES OF FPC FORM 20 FOR USE AS TRIAL AID

(Issued January 25, 1965)

By letter filed January 6, 1965, the Hunt Oil Company and fourteen associated respondents to these proceedings (Hunt) requested the Commission to provide them with approximately 5,000 copies of FPC Form 20 entitled "Cost and Statistics of Oil and Gas Production and Exploration for the Year 1962." Upon receipt of these copies, Hunt states that it proposed to "transmit four (4) copies of the questionnaire, together with two (2) copies of the instructions to each of the respondents who were not required to file an 'All Area Questionnaire' and request and urge that such questionnaire be properly completed and promptly returned to us [*i.e.*, the Hunt Oil Company] in triplicate." In the alternative, Hunt requests that its letter be treated as a motion for reconsideration of two recent orders issued herein, *infra*.

The Commission received a joint letter dated January 14, 1965 from Phillips Petroleum Company and thirty other respondents to these proceedings supporting Hunt's request and stating that they also had planned to make a request of the Commission identical to that of Hunt, but that a duplicate request would not now appear to be necessary. Phillips states, however, that it desires "reasonable access to all responses to the questionnaires to be circulated by Hunt Oil Company, *et al.*" and offers to cooperate with Hunt in circulating and compiling the data as well as sharing the attendant expenses.

On January 18, 1965, Oklahoma Independent Petroleum Association (OIPA) requested 500 copies of Form 20 for circulation to a group of producers.

By order issued herein on November 4, 1964, 32 FPC 1266 (reconsideration denied, December 29, 1964, 32 FPC 1536), we declined to prescribe the small producer report form (FPC Form 20) but issued it for informational purposes and provided that copies of the form would be made available in reasonable numbers upon request in order to facilitate the private gathering and presentation of representative and material small producer group data in the proceedings.

In view of the fact that the Hunt request contemplates the collection of such data from all small producer respondents for presentation in these proceedings, the necessary copies should be made available for that purpose. The OIPA request for circulation to a more limited number of producers should also be granted. Hunt and OIPA shall state in their letters of transmittal of the form that the information is being requested by them and not by the Federal Power Commission.

The Commission orders:

The Secretary is directed to furnish (1) to Hunt and OIPA the necessary copies of FPC Form 20 requested and (2) as to Hunt a list of the names and addresses of the respondents to these two proceedings.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

BACA GAS GATHERING SYSTEM, INC., DOCKET NO. CP65-57

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 25, 1965)

On August 28, 1964, as supplemented on September 30, 1964, and October 21, 1964, Baca Gas Gathering System, Inc. (Applicant), filed in Docket No. CP65-57 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and the sale of natural gas in interstate commerce, all as more fully set forth in the application, as supplemented, which is on file with the Commission.

Applicant proposes to construct and operate approximately 38 miles of natural gas pipeline to transport gas which will be purchased by Applicant from producers in Baca County, Colorado, and sold to Panhandle Eastern Pipe Line Company (Panhandle) in Morton County, Kansas. The subject facilities will provide a market for heretofore uncommitted gas supplies from an area in which there are no existing interstate natural gas pipelines.

Applicant estimates that 43,602 Mcf of gas at 14.73 psia are dedicated to the project. The gas will be purchased by Applicant from the producers at an initial rate of 12 cents per Mcf at 14.65 psia and sold to Panhandle at an initial rate of 16 cents per Mcf at 14.65 psia.

The estimated cost of the proposed facilities is $530,000, including approximately $50,000 of organization expenses, which will be financed by the issuance of common stock, convertible debentures, and notes. In a letter to the Commission dated December 9, 1964, Applicant agreed to accept a certificate with the following conditions:

1. No dividends shall be paid on the common stock for as long as the convertible debentures are outstanding unless the total long-term debt, inclusive of debentures, is less than 75 percent of the total capitalization.
2. The common equity shall be maintained at not less than 15 percent of the total capitalization.
3. Applicant's rate for sales to Panhandle shall not at any time exceed the sum of four cents plus any rate lawfully in effect for the sale of gas to Applicant by the producers.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been received.

At a hearing held on January 22, 1965, the Commission received and made a part of the record in this proceeding all evidence, including the application as supplemented and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Baca Gas Gathering System, Inc., a Texas corporation having its principal place of business in Dallas, Texas, will be a "natural-gas company" within the meaning of the Natural Gas Act upon completion of construction and commencement of the transportation of natural gas hereinafter authorized.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction of facilities and transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction of facilities and the transportation and sale of natural gas by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the certificate issued hereinafter should be conditioned by imposing the dividend, equity and rate restrictions hereinbefore described.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Baca Gas Gathering System, Inc., to construct facilities and transport and sell natural gas in interstate commerce as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

(D) The certificate issued by paragraph (A) above is conditioned as follows:

1. No dividends shall be paid on the common stock for as long as the convertible debentures are outstanding unless the total long-term debt, inclusive of debentures, is less than 75 percent of the total capitalization.

2. The common equity shall be maintained at not less than 15 percent of the total capitalization.

3. Applicant's rate for sales to Panhandle shall not at any time exceed the sum of four cents plus any rate lawfully in effect for the sale of gas to Applicant by the producers.

(E) Applicant shall file pursuant to Part 154 of the Regulations under the Natural Gas Act not less than thirty nor more than sixty days prior to the commencement of the sale of natural gas an appropriate rate schedule which rate schedule shall include *inter alia* "3" in paragraph (D) above.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

THE OHIO FUEL GAS COMPANY, DOCKET NO. CP65-24

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 25, 1965)

On July 22, 1964, The Ohio Fuel Gas Company (Applicant) filed in Docket No. CP65-24 an application, as amended on October 13, 1964, pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities in order to provide a total of seven additional delivery points to three existing customers, The Dayton Power and Light Company (Dayton), West Ohio Gas Company (West Ohio) and Columbia Gas of Ohio, Inc. (Columbia of Ohio), all as more fully set forth in the application, as amended.

Specifically, Applicant proposes to construct and operate the following facilities for (1) Dayton: a tap on Line A-97, regulator and measuring station for delivery of gas for resale and distribution in the unincorporated community of Frederick and environs, Miami County, Ohio; (2) West Ohio: a tap on Line D-322, regulator and measuring station for delivery of gas for resale and distribution in the unincorporated community of Westminster and environs, Allen County, Ohio, and (3) Columbia of Ohio: (a) a tap and measuring station on Line D for delivery of gas for resale and distribution in the incorporated community of Fulton and environs, Morrow County, Ohio, (b) a tap on Line D-35 for delivery of gas for resale and distribution in the unincorporated community of Adrian and environs, Seneca County, Ohio, (c) a tap on Line V-100 for delivery of gas for resale to Snow Bowl, Inc., for use by the latter in its ski lodge and resort presently under construction in Harrison County, Ohio, and (d) a tap on Line Z-8 for delivery of gas for resale to International Harvester Company at the latter's new factory in Clark County, Ohio; International Harvester will use natural gas for washing, drying, paint drying, space heating and air conditioning at its new truck manufacturing plant, and (e) a tap on Line FE-345 and measuring station for delivery of gas for resale in the unincorporated community of Reedsville and environs, Meigs County, Ohio.

The estimated third year peak day and annual natural gas requirements for the proposed services are:

Customer	Market	Peak day (Mcf)	Annual (Mcf)
Dayton	Frederick	84	8,530
West Ohio	Westminster	205	28,063
Columbia of Ohio	Fulton	133	15,600
	Adrian	45	5,300
	Snow Bowl, Inc.	89	13,000
	International Harvester	2,700	407,000
	Reedsville	138	17,760
Total		3,394	495,253

Applicant's customers have requested the proposed additional delivery points in order to serve their potential customers in communities and environs contiguous to their respective service areas not presently supplied with natural gas.

The total estimated cost of the proposed facilities is $20,671, which cost will be financed from cash on hand.

Applicant states that the present contractual commitments with the subject customers are considered adequate to provide for the initial service; therefore, no increase in contract demands is contemplated.

By letters dated September 25 and November 19, 1964, Applicant was issued temporary certificates authorizing the construction and operation of facilities necessary to provide five of the proposed delivery points.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application, as amended, has been filed.

At a hearing held on January 22, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, amendment and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, The Ohio Fuel Gas Company, an Ohio corporation having its principal place of business in Columbus, Ohio, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of August 21, 1945, in Docket No. G–371 (4 FPC 1033).

(2) The facilities hereinbefore described, as more fully described in the application, as amended, in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, The Ohio Fuel Gas Company, to construct and operate the proposed facilities in order to sell and deliver natural gas as hereinbefore described, all as more fully described in the application, as amended, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized which have not been authorized by temporary certificates shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within three (3) months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

MARTHA FEATHERSTONE, ET AL., DOCKET NO. CI64-591, ET AL.; GRAHAM B. MORRISON AND GLEN W. PRYOR, TRUSTEES, DOCKET NO. G-18884

ORDER DENYING MOTION FOR RECONSIDERATION OF ORDER DENYING MOTION FOR SEVERANCE AND REJECTING OFFER OF SETTLEMENT

(Issued January 26, 1965)

On June 29, 1959, Mountain States Drilling Company (Mountain States) filed in Docket No. G-18884 an application for a certificate of public convenience and necessity pursuant to Section 7 of the Natural Gas Act, for authority to sell and deliver natural gas to Pacific Northwest Pipeline Corporation (now El Paso Natural Gas Company) and to construct facilities necessary therefor, from acreage located in Sublette County, Wyoming, at a proposed initial price of 18.5¢ per Mcf at 15.025 psia.

Temporary authorization to commence this sale was granted to Mountain States by letter dated August 12, 1959, containing a condition, among others, that Mountain States should refund any amount in excess of the amount resulting from the rate finally determined to be proper in Docket No. G-18884.

Two assignments of the property were executed by Mountain States to Graham B. Morrison and Glen W. Pryor, Trustees for Richard Stoll Shannon III, *et al.* (Applicants) and the transfer became effective on January 1, 1964.

Accordingly, on February 19, 1964, applicants amended the application by filing a motion to be substituted for the predecessor, Mountain States.

Temporary authority to continue the sale was granted to applicants by letter dated April 24, 1964, containing a condition, among others, that applicants should refund any amount in excess of the amount resulting from the rate finally determined to be proper in Docket No. G-18884. By letter dated April 24, 1964, the Commission advised Mountain States of its responsibility for any refunds for sales prior to the date of transfer of the property.

By order issued July 29, 1964, the above-docketed proceedings were consolidated and a hearing thereon was held on October 5, 1964, terminating on October 8, 1964.

In the interim, on September 29, 1964, Applicants filed a motion for severance of Docket No. G-18884 from Docket No. CI64-25, *et al.*, and an offer of settlement. The Applicants agreed therein to accept a certificate of public convenience and necessity containing a condition that the initial rate should not exceed 15.384¢ per Mcf for the period subsequent to December 1, 1962. The motion was denied by order issued November 18, 1964, 32 FPC 1335.

As set forth in the order, Applicants' determination of the period for which refunds should be made was predicated on a refund period found proper in the disposition of a proceeding involving Section 4(e) of the Act (Socony Mobil Oil Company, Inc., Docket No. G-16710), whereas we are here concerned with an application for a certificate of public convenience and necessity filed pursuant to Section 7(c) of the Act, and a refund-conditioned temporary authorization.

On December 15, 1964, Applicants filed a motion for reconsideration of the order denying motion for severance and rejecting offer of settlement. Applicants contend that, by expressed contractual commitment, the rate they are entitled to charge El Paso was to be the rate approved by the Commission, in Docket No. G-16710. Based on this contractual commitment, trustees say that the rate in the instant docket (G-18884) should be the settlement rate approved for Socony in Docket No. G-16710. We deny such motion for the following reasons.

Contrary to the above contractual agreement of the parties, the temporary certificate issued to Applicant, like that issued to its predecessor Mountain States, contained a specific condition requiring Applicants to refund "to the purchaser any amounts collected for the proposed sale, plus interest at 7 percent per annum * * *, in excess of the amount resulting from the rate found to be required by the public convenience and necessity in Docket No. G–18884." The temporary certificate so-conditioned was accepted by Applicants and operations commenced thereunder. The condition in the temporary certificate is clear, the amount of the refund was to depend upon the "public convenience and necessity" rate determined to be proper in Docket No. G–18884, and not upon the rate finally allowed in Socony Mobil Oil Company, Inc. proceeding, Docket No. G–16710. It is well established that the Commission is obligated to approve rates no higher than those found to be required by the public convenience and necessity, notwithstanding the private contractual agreements of the parties. Furthermore, the acreage from which the natural gas is being sold by Applicants was not subject to the G–16710 proceeding.

The Commission finds:

The public interest would not be served by acceptance of the offer of settlement as proposed.

The Commission orders:

The motion for reconsideration of order denying motion for severance and rejecting offer of settlement is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

IDAHO POWER COMPANY, DOCKET NO. E–7194

SUPPLEMENTAL ORDER AUTHORIZING THE ISSUANCE OF COMMON STOCK

(Issued January 26, 1965)

By order issued January 15, 1965, *supra*, p. 76, in the above-entitled matter, the Commission authorized Idaho Power Company (Applicant) to issue and sell 250,000 shares of Common Stock, par value $5 per share, subject, among others, to the provisions set forth in Paragraph (B) of that order as follows:

(B) The proposed issuance and sale of Common Stock shall not be consummated until:

(i) Applicant shall have amended its application by filing with the Commission a verified copy of the underwriting agreement, as executed, between Applicant and the aforementioned underwriters for the purchase or underwriting of the proposed issuance of Common Stock.

(ii) The Commission, by further order, shall have approved the price to be received by Applicant for the proposed Common Stock.

Applicant, on January 25, 1965, filed an amendment, pursuant to the requirements of the aforementioned order, in which it stated that the price to Applicant for the Common Stock will be $39.175 per share, and the initial public offering price will be $39.875 per share.

The Commission finds:

(1) Applicant has satisfactorily complied with the requirements of Paragraph (B) of the Commission's order issued January 15, 1965 in the above-entitled

docket, and the price to be received by Applicant for the Common Stock is reasonable.

(2) The proposed issuance and sale of Common Stock, as hereinafter authorized will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility and which will not impair its ability to perform that service and is reasonably appropriate for such purposes.

The Commission orders:

(A) The price to be received by Applicant for the Common Stock as referred to above, is approved as reasonable.

(B) The proposed issuance and sale of Common Stock referred to above upon the terms and conditions, and for the purposes specified in the application as supplemented by the amendment referred to above, are authorized, subject only to the provisions of Paragraph (A), (C), (D), and (E) of the Commission's order issued January 15, 1965 in the above docket.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PACIFIC POWER & LIGHT COMPANY, DOCKET NO. E-7197

SUPPLEMENTAL ORDER AUTHORIZING ISSUANCE OF PREFERRED STOCK

(Issued January 26, 1965)

By order issued January 15, 1965, *supra*, p. 78, in the above-entitled matter, the Commission authorized Pacific Power & Light Company (Applicant), to issue and sell at competitive bidding 100,000 shares of Serial Preferred Stock, par value $100 per share, subject to the provisions, among others set forth in Paragraph (B) of that order as follows:

(B) The proposed issuance and sale of Preferred Stock at competitive bidding shall not be consummated until:

> (i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.
>
> (ii) The Commission, by further order, shall have approved the price to be received by Applicant for the proposed issuance of Preferred Stock and the dividend rate thereon.

Applicant, on January 26, 1965, filed an amendment, pursuant to the requirements of the aforementioned Commission order, in which it states, among other things, that it proposes to accept, as representing the lowest cost of money, the bid of Kidder, Peabody & Co., Incorporated, Eastman Dillon, Union Securities & Co. to purchase the Preferred Stock, par value $100 per share at a price of 100.24 per share and an annual dividend of 4.56%.

The Commission finds:

(1) Applicant has satisfactorily complied with the requirements contained in Paragraph (B) of the Commission's order issued January 15, 1965, in the above-

entitled docket; and under the respective bids it proposes to accept for the issuance of Preferred Stock, the price per share to be received by Applicant for the Preferred Stock and its dividend rate are reasonable.

(2) The proposed issuance and sale of Preferred Stock, as hereinafter authorized, will be for a lawful object, within the corporate purpose of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

The Commission orders:

(A) The price per share to be received by Applicant for the proposed issuance of Preferred Stock and the dividend rate thereof, are approved as reasonable.

(B) The proposed issuance and sale of Preferred Stock, referred to above, upon the terms and conditions, and for the purposes specified in the application, as supplemented by the amendment referred to above, are hereby authorized, subject only to the provisions of Paragraphs (C), (D), and (E) of the Commission's order issued January 15, 1965.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

THE CINCINNATI GAS & ELECTRIC COMPANY, DOCKET NO. E-7125; THE UNION LIGHT, HEAT AND POWER COMPANY, DOCKET NO. E-7203

ORDER ACCEPTING RATE SCHEDULE FILINGS, TERMINATING RATE INVESTIGATION AND SCHEDULING HEARING ON JURISDICTIONAL ISSUES

(Issued January 27, 1965)

This order accepts a settlement proposal of The Cincinnati Gas & Electric Company (CG&E), whereby the Company would reduce its wholesale electric rates and charges to its corporate affiliate The Union Light, Heat and Power Company (Union) by approximately $670,000 annually commencing December 1, 1964, and would reduce its wholesale electric rates and charges to five municipally owned electric distribution systems operating in the State of Ohio (Bethel, Blanchester, Georgetown, Hamersville and Ripley) and another corporate affiliate, West Harrison Gas & Electric Company in the event those wholesale sales are determined to be within the regulatory jurisdiction of this Commission, Sections 205 and 206 of the Federal Power Act, such reductions to be in an estimated aggregate amount of $80,560 annually, and retroactive to December 1, 1964.

By order issued September 4, 1963, 30 FPC 641, the Commission directed an investigation and hearing as to the lawfulness of CG&E's wholesale electric rates and charges and the issue of whether that Company by its failure to establish and maintain rate schedules for service to certain of its wholesale customers is in violation of the provisions of Sections 205 and 206 of the Federal Power Act and Part 35 of the Commission's Regulations thereunder.

The settlement proposal of CG&E and accompanying schedules of rates were submitted for filing January 18, 1965. That Company's rates and charges to Union would become effective December 1, 1964. Likewise CG&E's rates and charges to other wholesale customers would become effective December 1, 1964, but only in the event they are determined to be jurisdictional.[1]

CG&E requests that the jurisdictional questions arising from our September 4, 1963 order of investigation and hearing, be set for hearing commencing May 4, 1965, following service and exchange of prepared testimony with Commission staff. Also, that Company and Union propose that the jurisdictional status of CG&E's wholesale electric service to Bethel, Ohio and West Harrison Gas & Electric Company and of Union's wholesale electric service to Williamstown, Kentucky [2] be set for hearing and resolved as a part of a consolidated proceeding. The Commission's order of investigation and hearing, Docket No. E-7125, issued September 4, 1963, was predicated on information then on file with the Commission which did not reflect the fact that CG&E had at that time, contracted for service to Bethel, Ohio. CG&E's service to West Harrison Gas & Electric Company has been pursuant to a filed rate schedule of the Company, but CG&E now challenges this Commission's jurisdiction thereover.

Commission staff join in the foregoing proposals. No other parties appear of record in Docket No. E-7125.

We believe that the rate issues raised in Docket No. E-7125 should be disposed of through the acceptance of the proposed rate schedules, subject to the conditions hereafter stated. The proffered schedules with their consequent rate reductions result from our Order to Show Cause, and reflect staff and Company investigations as to cost of service. The settlement proposal was formulated following numerous conferences between the staff and representatives of CG&E and Union. In disposing of these questions, we take note of the rate relief to be afforded. Moreover, this order will expedite the determination of the jurisdictional questions associated with CG&E and Union.

Our acceptance of the proffered rate schedules in determination of the rate questions in this proceeding is not to be taken as indicative of our views as to the allowability of any of the items in CG&E's cost of service, nor should it be taken as indicative of what rate of return we might allow CG&E were these rate issues to be fully tried and decided on the merits as to all contested issues.

The Commission finds:

(1) Good cause has been shown that the prior notice period provided in Section 205(d) of the Federal Power Act be waived with respect to CG&E's Rate Schedule FPC No. 2, Supp. No. 5 (Union), and it be allowed to take effect as of December 1, 1964.

(2) It is necessary and appropriate for the purposes of the Federal Power Act, particularly Sections 201, 205, 206, 308 and 309 thereof, to terminate further investigation and hearing on issues other than those of Commission jurisdiction pursuant to Sections 205 and 206 of the Act, all as raised by order of the Commission issued September 4, 1963, Docket No. E-7125.

(3) It is necessary and appropriate for the purposes of the Federal Power Act, particularly Sections 201, 205, 206, 308 and 309, that CG&E be directed to show cause why the Commission should not find and determine that its sale at wholesale for resale to West Harrison Gas & Electric Company, and to the afore-mentioned Ohio municipalities, are sales at wholesale in interstate commerce, subject to the jurisdiction of this Commission under the provisions of

---

[1] Under the settlement proposal, the difference between charges under CG&E's existing and proffered rates, together with simple interest at the rate of 6⅛% per annum, is subject to refund to the appropriate municipal customers and West Harrison Gas & Electric Company.

[2] In 1952, Union filed with this Commission its contract for the wholesale sale of electric energy to the City of Williamstown, designated in the files of the Commission as Union's Rate Schedule FPC No. 6.

the Federal Power Act, for which CG&E must file appropriate rate schedules in the manner provided under Part 35 of the Commission's Regulations under that Act.

(4) It is necessary and appropriate for the purposes of the Federal Power Act, particularly Sections 201, 205, 206, 308 and 309 that Union be directed to show cause why the Commission should not find and determine that its sale at wholesale for resale to the City of Williamstown, Kentucky is a sale at wholesale in interstate commerce, subject to the jurisdiction of this Commission under the provisions of the Federal Power Act for which Union must file an appropriate rate schedule in the manner provided in Part 35 of the Commission's Regulations under that Act.

(5) It is necessary and appropriate for the purposes of the Federal Power Act, particularly Sections 205 and 206 thereof, that the following rate schedules be accepted for filing to become effective December 1, 1964, in the event of a determination of the regulatory jurisdiction of this Commission thereover pursuant to Sections 205 and 206 of the Act, in the manner hereinafter provided:

Rate schedule designation:	*Other party*
FPC No. 22	Village of Bethel, Ohio.
FPC No. 23	Village of Blanchester, Ohio.
FPC No. 24	Village of Georgetown, Ohio.
FPC No. 25	Village of Hamersville, Ohio.
FPC No. 26	Village of Ripley, Ohio.
Supplement No. 2 to FPC No. 15	West Harrison Gas & Electric Co.

(6) It is necessary and appropriate for the purposes of the Federal Power Act, particularly Sections 201, 205, 206, 308 and 309 thereof, that the jurisdictional issues to be determined as referred to in findings (2), (3) and (4) above be consolidated for hearing purposes as hereinafter provided.

The Commission orders:

(A) The prior notice period provided in Section 205(d) of the Federal Power Act is hereby waived with respect to the proffered rate schedule referred to in finding (1) above, and it is hereby allowed to take effect as of December 1, 1964.

(B) The issuance of this order shall constitute full notice of the filing and publication of the rate schedule referred to in Paragraph (A) insofar as its effective date is concerned.

(C) The proffered rate schedules for service to Bethel, Blanchester, Georgetown, Hamersville, and Ripley, Ohio and West Harrison Gas & Electric Company, referred to in finding (5) above, are accepted for filing to become effective December 1, 1964, subject to a determination of jurisdiction of this Commission thereover and exhaustion of judicial review of any such Commission determination, or the time within which to seek that review. CG&E shall refund to those customers any charges collected in excess of amounts payable under the foregoing rate schedules if applied on and after December 1, 1964, together with simple interest of 6⅛% per annum.

(D) Acceptance of CG&E's rate schedules as herein provided is without prejudice to any findings or orders which have been or hereafter may be made by this Commission in any proceeding by or against the aforementioned companies. Moreover, nothing in this order shall be construed as a waiver in any other respect of the requirements of Section 205(d) of the Federal Power Act or Part 35 of the Commission's Regulations under the Act, provided however that with respect to the rate schedules referred to in Paragraph (C) above, CG&E need not file any additional supporting cost of service information as otherwise might be required by Section 35.12 or 35.13 of those Regulations in the event that such schedules are used for billing purposes under conditions as contemplated herein, but CG&E shall file all rules, regulations, classifications, and practices together with all contracts which affect or relate to those services.

(E) A public hearing shall be held at the time and place specified hereafter (Docket No. E-7125), at which CG&E shall show cause why the Commission should not:

(1) Find and determine that CG&E's sales at wholesale for resale to Bethel, Blanchester, Georgetown, Hamersville and Ripley, Ohio, to the West Harrison Gas & Electric Company, City of Hamilton, Ohio, Dayton Power and Light Company, and Inter County REA, are sales of electric energy at wholesale for resale in interstate commerce, subject to the provisions of Section 201, 205 and 206 of the Federal Power Act and Part 35 of the Commission's Regulations thereunder.

(2) Find and determine that CG&E has been violating or proposes to violate Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations thereunder;

(3) Order CG&E to file and maintain rate schedules with this Commission for service to the purchasers named above in accordance with the provisions of Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations thereunder; and

(4) Issue such other orders and take such other actions as may be necessary or appropriate to bring about compliance with the Federal Power Act and the Commission's Regulations thereunder.

(F) A public hearing shall be held at the time and place specified hereinafter, (Docket No. E-7203), at which Union shall show cause why the Commission should not:

(1) Find and determine that Union's sale at wholesale for resale to Williamstown, Kentucky is a sale at wholesale for resale in interstate commerce, subject to the provisions of Section 201, 205 and 206 of the Federal Power Act and Part 35 of the Commission's Regulations thereunder;

(2) Find and determine that Union has been violating or proposes to violate Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations thereunder;

(3) Order Union to file and maintain a rate schedule with this Commission for service to Williamstown, Kentucky in accordance with the provisions of Section 205 of the Act and Part 35 of the Commission's Regulations thereunder; and

(4) Issue such other orders and take such other actions as may be necessary or appropriate to bring about compliance with the Federal Power Act and the Commission's Regulations thereunder.

(G) A public hearing shall be held commencing May 4, 1965, 10:00 A.M. (EST) in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C., respecting the matters raised by this order, Paragraphs (E) and (F) above, and for hearing purposes Docket Nos. E-7125 and E-7203 are hereby consolidated.

(H) The following procedure is prescribed for that public hearing:

(1) Commission staff shall file its prepared direct case not later than February 15, 1965, ten copies to be served on CG&E and Union;

(2) CG&E and Union shall file their prepared case in chief and answering case not later than April 15, 1965, ten copies to be served on Commission staff;

(3) All of the testimony, except exhibits, shall be in question and answer form.

(4) Each witness shall execute an affidavit adopting the testimony for which he assumes responsibility and an original and two conformed copies of such affidavit shall be filed with his prepared testimony.

(5) The Presiding Examiner shall specify the order of cross-examination for the information of the parties in making their respective witnesses available for cross-examination. At the conclusion of cross-examination, the Presiding Examiner shall set the date for filing of Staff's prepared rebuttal case, if Staff desires to present rebuttal evidence.

(I) The Commission's Rules of Practice and Procedure shall apply in this proceeding except to the extent that they are modified or supplemented herein.

(J) Notices of intervention or petitions to intervene in this proceeding as presently constituted may be filed with the Federal Power Commission, Washington, D.C., 20426 on or before February 15, 1965, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.37).

(K) The proceeding in Docket No. E-7125 is hereby terminated except for those issues specified in Paragraph (E) above.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

ATLANTIC SEABOARD CORPORATION, DOCKET NO. G-16401; HOME GAS COMPANY, G-16402; KENTUCKY GAS TRANSMISSION CORPORATION, G-16403; THE MANUFACTURERS LIGHT AND HEAT COMPANY, G-16404

ORDER REOPENING PROCEEDINGS, PROVIDING FOR FURTHER HEARING AND DENYING PETITION FOR DECLARATORY ORDER

(Issued January 28, 1965)*

On June 26, 1964, the United States Court of Appeals for the District of Columbia Circuit, in *Lynchburg Gas Company* v. *F.P.C.*, 336 F. 2d 942, by *per curiam* order set aside and remanded for further proceedings the Commission's Opinion No. 368 and order in Docket No. G-16401, *et al.*, issued November 27, 1962, 28 FPC 860. The Commission, in that opinion, modified and approved a partial requirements rate schedule, designated CDS-PR, proposed by four affiliates of the Columbia Gas System: Atlantic Seaboard Corporation (Seaboard), Home Gas Company (Home), The Manufacturers Light and Heat Company (Manufacturers), and Kentucky Gas Transmission Corporation (Kentucky). The proposed CDS-PR rate schedules, applicable to those customers securing a part of their requirements from other sources, provided for the same monthly demand and commodity charges as contained in the respective company's CDS rate schedule, and in addition provided for minimum monthly and annual commodity charges. The Commission modified the rate schedule proposed by the four companies to provide that the minimum monthly and annual commodity charge would be based on 80% of the number of days' use of the purchaser's contract demand in the base month and base period, as defined in the schedule. The

---

*Rehearing and Reconsideration denied March 25, 1965, 33 FPC 619.

Commission further provided for redetermination of the days' use in the base month and base period in the event of a 10% increase or decrease in the purchaser's sales of gas for industrial purposes.

The court, in remanding the case to the Commission for further proceedings, holds that the Commission's opinion lacked the subsidiary findings sufficient to support the Commission's conclusion as to the necessity of the PR rate schedule and as to the propriety of the redetermination provision inserted by the Commission. The several opinions indicate a number of areas of inquiry and point to matters that the various members of the court believe the Commission must consider in order to determine that the PR rate is consistent with the welfare of ultimate consumers.

Upon review of the record of these proceedings, it appears that the evidence may be insufficient to support findings in all the areas of inquiry referred to in the court's separate opinions. Accordingly, we believe that it is necessary and appropriate that these proceedings be reopened and that we provide for further hearing herein in order that all parties and the Commission staff will have the opportunity to present evidence directed to the issues raised by the court's order.

Lynchburg Gas Company (Lynchburg), a purchaser from Seaboard of part of its natural gas requirements, on August 31, 1964, filed a Petition for Declaratory Order on Remand in which it requests the Commission to issue an order declaring that the only valid and effective rate schedule under which Seaboard may bill its customers for contract demand volumes is its CDS (Contract Demand Service) Rate Schedule. The aforementioned Columbia Companies filed an answer to Lynchburg's petition on September 21, 1964.

In support of its petition, Lynchburg argues (1) that the Commission in its order found the PR schedules as originally filed by the Columbia Companies were not just and reasonable; (2) that the Commission in the same order found the PR schedules as modified by the Commission were just and reasonable; (3) that the judgment of the court "reiterating the language of the opinion, specifically provided: 'The order of the Federal Power Commission on review in this case is *set aside*' (emphasis added)"; (4) that the same words of the judgment, as quoted by Lynchburg, simultaneously invalidated the Commission's holding that the revised PR was just and reasonable and confirmed the holding that original PR was not just and reasonable.

This argument is clearly without merit. The court in its opinion does not declare the PR rate to be null and void or suggest that it was remanding the case to the Commission for the mere ministerial act of dismissing and terminating the proceedings. On the contrary, the court set aside the Commission's order because it believed that the Commission's findings were inadequate to support its conclusions and remanded the case to the Commission "for further proceedings not inconsistent with the opinion of this Court", *i.e.*, to inquire into the various issues specified in the court's opinion. This action does have the effect of voiding at least temporarily the modified CDS–PR rate prescribed by the Commission, since that rate has no legal status save in the Commission's order, which has been set aside. It does not, however, void the basic CDS–PR schedule as originally instituted by the Columbia System Companies since this rate has been made effective, subject to refund, pursuant to the statutory procedure prescribed by Section 4 of the Natural Gas Act and remains the filed rate until superseded by lawful final order.

Accordingly, it is our conclusion that pending the further proceedings consistent with the court's opinion and our decision therein, the PR rate schedules of the aforementioned companies which became effective pursuant to our order issued October 1, 1958, subject to refund, continue in effect subject to the same conditions contained in that order, provided, however, that monthly demand and commodity charges therein during the period involved shall continue to be no higher than those effective under the individual company's applicable CDS rate schedules during the same period. We may note, in passing, that this result cannot harm Lynchburg since even assuming that the minimum bill provisions actually apply to it prior to final action in this proceeding, any excess payment required thereby would be subject to refund, with interest.

The Commission orders:

(A) The proceedings in the above-captioned dockets hereby are reopened and further hearing shall be held to permit all the parties to adduce and present such evidence as they deem necessary and appropriate to meet the issues set forth in the above-referenced court's opinion.

(B) Atlantic Seaboard Corporation, Home Gas Company, Kentucky Gas Transmission Corporation and The Manufacturers Light and Heat Company, respondents, shall serve their prepared testimony and exhibits constituting their direct case upon all parties on or before February 23, 1965.

(C) The Commission staff and all interveners proposing to present evidence shall serve their prepared testimony and exhibits upon all parties as follows: Staff, on or before March 17, 1965. Interveners, on or before March 26, 1965.

(D) Presiding Examiner Howell Purdue, or any other officer or officers of the Commission designated by the Chief Examiner for that purpose (see Delegation of Authority, 27 F.R. 4276, etc.), shall fix the date of hearing by notice thereof; shall preside at the prehearing conference herein provided; at any other conferences he may find it appropriate to convene, and at the hearing in this matter, pursuant to the Commission's Rules of Practice and Procedure and as further provided by this order.

(E) Pursuant to Section 1.18 of the Commission's Rules of Practice and Procedure, a prehearing conference before the Presiding Examiner shall commence at 10:00 a.m. (EST) on April 6, 1965, in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C., 20426, for the purpose of reaching such agreements as will expedite the determination to be made herein, including, but not limited to, stipulation of facts, and establishment of dates for the service of rebuttal testimony and for the cross-examination of all testimony, and of considering such other matters as may be properly dealt with to aid in expediting the orderly conduct and disposition of these proceedings.

(F) Lynchburg's Petition for Declaratory Order on Remand, filed August 31, 1964, is denied and the CDS–PR Rate Schedules of Seaboard, Home, Kentucky and Manufacturers filed on August 20, 1958, are reinstated as legally effective rate schedules subject to the conditions of the Commission's order in these proceedings issued October 1, 1958, and provided, further, that during the period involved the monthly demand and commodity charges in those PR rate schedules shall not be higher than the monthly demand and commodity charges effective under the individual company's applicable CDS rate schedules during the same period.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

COMMUNITY NATURAL GAS COMPANY, INC., DOCKET NO. CP65-62

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued January 28, 1965)

On September 3, 1964, Community Natural Gas Company, Inc. (Applicant), filed in Docket No. CP65-62 an application, as supplemented on October 16 and December 2, 1964, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing the American Louisiana Pipe Line Company (American Louisiana) to establish physical connection of its transmission facilities with the proposed facilities of Applicant and to sell and deliver natural gas to Applicant for resale and distribution in the Town of Dale, Indiana and its environs including the unincorporated town of Mariah Hill.

The facilities proposed to be constructed by Applicant consist of the distribution lines and 2.6 miles of 3-inch lateral transmission pipeline at an estimated cost of $145,000 which cost will be financed by the issuance and sale of bonds and a bank loan.

Applicant shows that it has obtained from the Public Service Commission of Indiana a certificate authorizing it to render natural gas service in Spencer County and to borrow the sum of $87,000 from a bank.

The daily volume of gas to applicant is estimated at 426 Mcf for distribution and resale.

On September 17, 1964, American Louisiana filed its answer to the application stating that it had no objection to the rendition of the gas service requirements of Applicant.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on December, 22, 1964 (29 F.R. 18189). No protest or petition to intervene or notice of intervention has been filed in this proceeding.

The Commission finds:

(1) Applicant, American Louisiana Pipe Line Company, a Delaware corporation having its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order accompanying Opinion No. 276 in Docket No. G-2306, *et al.*, issued October 1, 1954 (13 FPC 380).

(2) Applicant is a public utility company organized and existing under the laws of the State of Indiana and is engaged in the business of distributing and selling natural gas within said state.

(3) It is necessary and desirable in the public interest that American Louisiana Pipe Line Company be directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver to Applicant its gas requirements of up to a maximum daily volume of 426 Mcf of Natural gas as set forth in the application and as hereinafter ordered and conditioned.

(4) Applicant should be prepared to receive natural gas from American Louisiana Pipe Line Company within one year from the date of issuance of this order.

(5) The requirement that American Louisiana Pipe Line Company serve Applicant, as proposed, will not place any undue burden upon nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) American Louisiana Pipe Line Company be and it is hereby directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to deliver to Applicant its gas requirements up to a maximum daily volume of 426 Mcf of natural gas as hereinbefore described and as more fully described in the application.

(B) Applicant shall be prepared to receive natural gas from American Louisiana Pipe Line Company within one year from the date of issuance of this order.

(C) American Louisiana Pipe Line Company shall report to the Commission in writing the date of commencement of service to Applicant for service to the Town of Dale, Indiana and environs within 10 days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

MISSISSIPPI RIVER TRANSMISSION CORPORATION,* DOCKET NO. CP64–265

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 28, 1965)

On April 30, 1964, Mississippi River Transmission Corporation (Applicant) filed in Docket No. CP64–265 an application, as supplemented on November 2, 1964, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and the transportation and delivery, on an interruptible basis, of natural gas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Applicant proposes to install a tap connection on its existing 12¾-inch O.D. pipeline in Jefferson County, Missouri, and to construct and operate 1.31 miles of 6⅝-inch O.D. line from said connection to a proposed portland cement manufacturing plant being constructed near Festus, Jefferson County, Missouri, by River Cement Company, a Division of Stewart Concrete and Material Company. The latter company is a wholly-owned subsidiary of Mississippi River Fuel Corporation. Applicant will utilize the proposed facilities to transport and deliver natural gas for use in firing a rotary cement-burning kiln, driers and other equipment incidental to the operation of said plant.

The estimated third year annual and maximum day deliveries are 1,840,000 Mcf and 10,000 Mcf, respectively.

---

*The original application was filed by Mississippi River Fuel Corporation. However, in Docket No. CP63–12, by Commission order issued August 7, 1964, 32 FPC 551, Mississippi River Transmission Corporation was authorized to acquire, among other things, the pipeline facilities of Mississippi River Fuel Corporation. Accordingly, Mississippi River Transmission Corporation will be substituted as Applicant in the instant docket.

Pursuant to a contract dated October 26, 1964, gas will be sold at a rate of 48 cents per Mcf for all gas used in other than rotary kilns and raw material drying equipment; gas used in rotary kilns and raw material drying equipment will be sold at a rate of 35 cents per Mcf during the period from November 15 through March 15 and 21½ cents per Mcf during the period from March 16 through November 14 of each year.

The estimated cost of the proposed construction is $58,900, which cost will be financed with cash on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application, as supplemented, has been filed.

At a hearing held on January 27, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplement and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Mississppi River Transmission Corporation, a Delaware corporation having its principal place of business in St. Louis, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 29, 1960, in Docket No. CP60–95 (24 FPC 1020).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed transportation and delivery of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) The certificate issued hereinafter should be granted on the express condition that the interruptible service authorized hereinafter shall be subject to any curtailment or interruption required to meet existing or future contracted maximum delivery obligations of Mississippi River Transmission Corporation for firm service to its customers.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Mississippi River Transmission Corporation, to construct and operate the proposed facilities and to transport and deliver natural gas as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the transportation and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 6 months from the date on which this order issues.

(D) The certificate issued hereby is granted on the express condition that the interruptible service authorized herein shall be subject to any curtailment or interruption required to meet existing or future contracted maximum delivery obligations of Mississippi River Transmission Corporation for firm service to its customers.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PACIFIC GAS TRANSMISSION COMPANY, DOCKET NO. CP62-59

ORDER AMENDING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 28, 1965)

On November 19, 1964, Pacific Gas Transmission Company (Applicant), 245 Market Street, San Francisco, California, 94106, filed in Docket No. CP62-59 an application to amend the certificate granted therein by extending authorization for an additional three years to provide for the construction, maintenance and operation of taps and metering facilities to enable it to deliver gas transported for the account of El Paso Natural Gas Company (El Paso) to certain of the latter's distribution customers in its Northwest Division, pursuant to authorizations to be obtained by El Paso from time to time, all as more fully set forth in the application to amend.

On April 6, 1962, 27 FPC 671, in Docket No. CP62-59 the Commission issued Applicant the certificate of public convenience and necessity which it seeks to amend.

The application to amend states that under its tariff El Paso will pay for the construction costs, not to exceed $15,000 at any delivery point.

Due notice of the filing of the petition to amend and opportunity for hearing thereon has been given by publication in the Federal Register on December 29, 1964 (29 F.R. 18533). No protest or petition to intervene or request for hearing has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission order issued April 6, 1962, in Docket No. CP62-59 be amended as hereinafter ordered.

The Commission orders:

(A) The certificate of public convenience and necessity issued to Pacific Gas Transmission Company in the Commission order of April 6, 1962, in Docket No. CP62-59 be and the same is hereby amended so as to authorize the changes it requests as is more particularly described in the aforementioned application which is on file with the Commission.

(B) In all other respects the order in Docket No. CP62–59 shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TRANSWESTERN PIPELINE COMPANY, DOCKET NO. CP65–148; CITIES SERVICE GAS COMPANY, DOCKET NO. CP65–150

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 28, 1965)

On November 23, 1964, Transwestern Pipeline Company (Transwestern) filed in Docket No. CP65–148 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities and the sale of natural gas, all as more fully set forth in the application.

Transwestern proposes to construct and operate a 6-inch tap valve and appurtenant facilities, to be located at the point where its existing 10-inch Laverne lateral crosses the 26-inch Oklahoma-Hugoton line of Cities Service Gas Company (Cities Service), and to sell such volumes of natural gas to Cities Service as Transwestern may have available, up to 50,000 Mcf per day, pursuant to an agreement between the parties dated November 6, 1964.[1] The proposed sales are to extend for a period ending six months after the date of first deliveries under said agreement or the date Transwestern is ready to commence deliveries pursuant to authorization pending in Docket No. CP64–104, whichever is earlier.

On November 23, 1964, Cities Service Gas Company (Cities Service) filed in Docket No. CP65–150 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities, all as more fully set forth in the application.

Cities Service proposes to construct and operate metering and regulating facilities at a point in Harper County, Oklahoma, where Transwestern's 10-inch Laverne lateral crosses Cities' 26-inch Oklahoma-Hugoton pipeline for the purpose of obtaining an additional supply of gas for the coming winter to supplement Cities' present supplies.

Transwestern agrees to sell and deliver to Cities Service, pursuant to the agreement dated November 6, 1964, such quantities of natural gas as Cities Service may require and as Transwestern may have available for delivery up to 50,000 Mcf per day for a period ending six months after the date of first deliveries under the agreement or the date Transwestern is ready to commence deliveries of gas pursuant to authorization issued in Docket No. CP64–104, whichever date is earlier.

The estimated cost of the proposed facilities of Cities Service is $10,000 and of Transwestern is $1,860, which it is proposed to be financed with treasury cash.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the applications has been filed.

---

[1] Temporary authorization issued by the Commission on December 23, 1964.

At a hearing held on January 27, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications and exhibits, submitted in support of the authorization, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Transwestern Pipeline Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued October 10, 1963 in Docket No. CP63-290 (30 FPC 997).

(2) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G-298 (4 FPC 471).

(3) The proposed construction and operation of facilities and sale of natural gas by Transwestern and construction and operation of facilities and transportation of natural gas by Cities Service, as hereinbefore described and as more fully described in the applications and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The aforesaid proposed construction and operation of facilities, transportation and sale of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Transwestern and Cities Service are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(6) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Transwestern and Cities Service's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (c)(3, (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) Certificates of public convenience and necessity be and the same are hereby issued to Transwestern and Cities Service authorizing the construction and operation of facilities and the sale of natural gas by Transwestern and the construction and operation of facilities and transportation of natural gas by Cities Service as more fully described in the applications in these proceedings,[2] subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificates issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

---

[2] For a period ending six months after the date of first deliveries under agreement of November 6, 1964, or the date Transwestern is ready to commence deliveries pursuant to authorization pending in Docket No. CP64-104, whichever is earlier.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TRUNKLINE GAS COMPANY, DOCKET NO. CP65-174

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 28, 1965)

On December 14, 1964, Trunkline Gas Company (Applicant) filed in Docket No. CP65-174 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1965 and the operation of miscellaneous field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application in this proceeding.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new and present supplies of natural gas in various producing areas generally coextensive with said system.

The total cost of the facilities covered by this application will not exceed a maximum of $2,500,000, with no single project to exceed a cost of $500,000, which costs are proposed to be financed from funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 27, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Trunkline Gas Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 29, 1949, in Docket No. G-882 (8 FPC 250).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with subparagraph (3) of Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act

and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1965 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $2,500,000, with no single project to exceed a cost of $500,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Trunkline Gas Company, to construct during the calendar year 1965, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with subparagraph (3) of Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1965, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $2,500,000, with no single project to exceed a cost of $500,000.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNITED FUEL GAS COMPANY, DOCKET NO. G-20270; ATLANTIC SEABOARD CORPORATION, DOCKET NO. G-20272

ORDER DENYING APPLICATION FOR REHEARING

(Issued January 28, 1965)*

On December 31, 1964, Lynchburg Gas Company (Lynchburg) filed an application for rehearing and reconsideration of the Commission's order issued herein December 24, 1964, 32 FPC 1529, to the extent that such order denied Lynchburg's request to reject certain rate schedules. That order accepted for filing revised tariff sheets tendered by Atlantic Seaboard Corporation (Seaboard) on November 20, 1964, and also accepted Seaboard's plans of refunds and rate reductions filed in compliance with Opinion Nos. 430, 31 FPC 1342, and 430-A, 32 FPC 1106.

Among the revised tariff sheets filed by Seaboard on November 20, 1964, were eight sheets containing provisions for service under Seaboard's Partial Requirements (PR) Rate Schedules, with rate levels as reduced pursuant to Opinion Nos. 430 and 430-A. The prior effective tariff sheets comprising the PR rate schedules had been filed by Seaboard in compliance with Opinion No. 368 in Docket No. G-16401, *et al.*, 28 FPC 860, to supersede those which became effective subject to refund pursuant to our order issued October 1, 1958, in those proceedings.

---

*Reconsideration denied March 25, 1965, 33 FPC 619.

On November 27, 1964, Lynchburg, which buys a part of its natural gas requirements from Seaboard, filed a protest in these proceedings contending that the court in the *Lynchburg* case[1] had invalidated the PR rate schedules when it set aside and remanded for further proceedings the Commission's Opinion No. 368 and therefore Seaboard's inclusion of PR rate schedules in its filing of November 20, 1964, was unlawful. Lynchburg requested the Commission to reject the tendered PR rate schedules. In the order issued December 24, 1964, the Commission denied this request, stating that, without prejudgment of the issues on remand in the proceedings in Docket No. G–16401, *et al.*, it was appropriate for Seaboard to file a reduction in the rate levels contained in the PR rate schedules corresponding to the reduction in the other contract demand rate schedules as required by order in Docket No. G–20270, *et al.*, subject to further proceedings in Docket No. G–16401, *et al.*

Pursuant to the court's remand in the *Lynchburg* case, we have issued an order reopening the proceedings in Docket No. G–16401, *et al.*, to give all parties an opportunity to present evidence pertinent to the issues set forth in the court's opinion. That order also denies Lynchburg's petition for a declaratory order in those dockets and reinstates, as legally effective rate schedules pending the reopened proceedings and our decision therein, the PR rate schedules originally proposed by Seaboard (and three other Columbia System affiliates) subject to the conditions of our order issued October 1, 1958, which made those rate schedules effective, subject to refund.

We believe our findings and conclusions in that order are fully dispositive of the contentions made by Lynchburg in its application for rehearing in these proceedings. Based upon those findings and conclusions, which are here incorporated, we find that Lynchburg's application for rehearing filed December 31, 1964, should be denied.

The Commission orders:

The application for rehearing and reconsideration filed by Lynchburg on December 31, 1964, hereby is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP65–111

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 28, 1965)

On October 26, 1964, as supplemented on November 13, 1964, United Gas Pipe Line Company (Applicant), filed in Docket No. CP65–111 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of natural gas facilities and the transportation thereof, all as more fully set forth in the application.

Applicant seeks authorization to construct and operate approximately .8 mile of 6-inch pipe line, .7 mile of 4-inch pipe line, and a sales meter and appurtenant facilities, located in Harrison County, Mississippi, for the purpose of enabling Applicant to deliver natural gas on a firm basis to Reichhold Chemicals, Inc. for use in its chemical plant near Gulfport, Harrison County, Mississippi.

---

[1] *Lynchburg Gas Company* v. *Federal Power Commission*, 336 F. 2d 942 (issued June 26, 1964).

Estimated annual and peak day requirements for the initial three-year period are stated to be:

Mcf:	*First year*	*Second year*	*Third year*
Annual	201,600	302,400	403,200
Peak day	700	1,400	1,400

The estimated cost of Applicant's construction is $56,456, which will be financed with current working funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 27, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application as supplemented, and exhibits submitted in support of the authorization sought, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G-232 (3 FPC 863).

(2) The proposed construction and operation of facilities and transportation of natural gas by Applicant as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid construction and operation of facilities and transportation of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to the Applicant in this proceeding, authorizing the construction and operation of facilities and the transportation of natural gas as more fully described in the application as supplemented, and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid regulations within 6 months of the date on which this order issues.

(D) The certificate issued hereby shall not entitle the industrial customer to whom firm deliveries are authorized herein to any priorities or rights to additional gas for meeting any future increases in its requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP64-255 (PHASE I)

ORDER DENYING PETITION FOR REHEARING AND AMENDMENT OF COMMISSION'S FINDINGS AND ORDER

(Issued January 29, 1965)

On January 4, 1965, Iron Ranges Natural Gas Company (Petitioner) filed in Docket No. CP64-255 (Phase I) a petition for rehearing and amendment of the Commission's findings and order issued December 21, 1964, 32 FPC 1491, in said docket.

The order of December 21, 1964, issued a certificate of public convenience and necessity to Northern Natural Gas Company (Northern) authorizing the construction and operation of certain pipeline facilities in order to provide initial natural gas service to the Mesabi Iron Range Area of Minnesota. Findings paragraph (8) and ordering paragraph (F) of said order reserved an excess mainline capacity of 2,233 Mcf per day for service to the Hanna Mining Company (Hanna) ". . . provided Hanna advises Applicant on or before January 1, 1965, that it will construct a plant and enter into a contract to purchase natural gas from Applicant."

Petitioner requests that the order of December 21, 1964, be amended by adding the words "or from a supplier purchasing natural gas from Applicant for this purpose" at the end of the above quoted phrase. Petitioner alleges that Hanna proposes to construct two plants. Further, it is alleged that one of such plants will be constructed within the limits of a certain village and the other beyond the limits of another certain village and that Petitioner has a public utility franchise to distribute natural gas within both villages. Petitioner states that by amending the order of December 21, 1964, as proposed, petitioner will not be precluded from making the sale to Hanna.

Northern's application in Phase I of this docket contains a letter of intent, dated March 17, 1964, wherein Hanna agrees to purchase up to 3,300 Mcf of natural gas per day from Northern for use in a plant proposed to be constructed, provided, however, among other things, that Hanna does in fact build such a plant and that Hanna determines that natural gas is the most feasible and economical fuel.

On January 4, 1965, Northern filed a letter, dated December 28, 1964, from Hanna wherein Hanna states that it will construct a plant and use natural gas and will proceed to enter into a contract for the purchase of such gas from Northern. Accordingly, it appears that the conditions of finding (8) and ordering paragraph (F) of the order of December 21, 1964, have been met.

In its application Northern clearly manifests its intent to serve Hanna directly. The market projected for Iron Ranges does not include any sales to Hanna. The notice of application issued on October 30, 1964, made clear that Northern was proposing direct service to Hanna. On June 1, 1964, Petitioner filed a petition to intervene in this docket. Said petition supported Northern's application and did not object to the proposed direct sale to Hanna. Petitioner makes no showing now which it could not have made earlier. Under these circumstances we see no reason to reopen the proceeding to consider the merits of petitioner's argument.

Accordingly, the petition for rehearing and amendment should be denied.

The Commission orders:

Iron Ranges Natural Gas Company's petition for rehearing and amendment of the Commission's findings and order issued December 21, 1964, in Docket No. CP64-255 (Phase I), is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP65-164

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT

(Issued January 29, 1965)

On December 8, 1964, Northern Natural Gas Company (Applicant), 2223 Dodge Street, Omaha, Nebraska, filed in Docket No. CP65-164 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain facilities in Dakota County, Minnesota, all as more fully set forth in the application on file with the Commission.

Applicant proposes to abandon measuring and regulating facilities and appurtenances originally installed to enable Minneapolis Gas Company (Minneapolis) to serve the Orest and Crystall View Heights Housing Additions (Orest) in Dakota County, Minnesota.

The application states that due to current highway construction Minneapolis extended its distribution system in order to avoid interruption of service to Orest, and is presently serving the area through another existing measuring station, located approximately one mile south of the Orest Station. Since Minneapolis is no longer utilizing the Orest Station, Applicant requests permission and approval to abandon and remove this station.

The application further states that Minneapolis contributed the entire cost of constructing the Orest Station, and that Applicant will, therefore, refund to Minneapolis the original cost of the Station less depreciation and the cost of removal. The adjusted refund to Minneapolis is stated to be $1,804.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 27, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorizations sought, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-280 (3 FPC 967).

(2) The facilities proposed to be abandoned, as hereinbefore described and as more fully described in the application herein, are used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and approval thereof should be granted as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment of the facilities hereinbefore described, as more fully described in the application in this proceeding, are hereby granted to Applicant.

(B) Applicant shall advise the Commission of the date of abandonment of the facilities authorized in paragraph (A) above within ten days of such abandonment.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SUNRAY DX OIL COMPANY, DOCKET NO. G-6822, ET AL.[1]

ORDER CONDITIONALLY APPROVING RATE SETTLEMENT PROPOSAL, TERMINATING PROCEEDINGS AND PRESCRIBING REFUNDS

(Issued January 29, 1965)

There is before us for consideration a Motion for Approval of Settlement Proposal and Termination of Proceedings filed on December 29, 1964, by Sunray DX Oil Company (Sunray) encompassing the rates for 155 of Sunray's currently effective FPC Gas Rate Schedules. Comments have been filed by some of the parties to these proceedings, all of which have been given due consideration. In summary, the settlement proposal as filed by Sunray provides:

(1) Settlement rates, including tax reimbursement, equal to or less than the Commission's applicable area ceilings with three exceptions hereinafter discussed;

(2) Sunray waives the right to make effective contractually authorized increased rates until June 1, 1972, for Rate Schedules Nos. 159, 186, 215 and 216 and to file for contractually authorized increase rates until January 1, 1968, for the remainder of the rate schedules. Sunray reserves the right to file for any increased rates, if contractually authorized, up to the applicable area-rate levels established by an order or rule of the Commission, or to file for any contractually authorized increase in tax reimbursement;

(3) Sunray would delete any favored-nation, price redetermination and periodic escalation clauses contained in Rate Schedule Nos. 1, 3, 5, 20, 37, 53, 60, 72, 74, 151, 190, 194 and 208, and additionally would delete the favored-nation and price redetermination clauses in Rate Schedule Nos. 45 and 175.

---

[1] The additional dockets involved herein are set forth in Appendices A, B, and C attached hereto.

(4) Refunds with interest, at the applicable rates, to December 31, 1964, under rate schedules where collection was made subject to refund, of the difference between the revenues actually collected and those which would have been collected at the settlement rate, in each instance, commencing with December 31, 1962, to the date upon which the settlement rates become effective.

(5) Exclusion from the settlement proposal of sales in the Permian Basin; fifteen sales related to previous offers of settlement accepted by the Commission; seven sales to other producers who make jurisdictional sales for resale; one sale consolidated in certificate proceedings that are presently under court review; two sales in an area where the Commission has fixed no area rate ceiling, and those matters relating to Rate Schedule Nos. 109, 161 and 189, insofar as the dockets thereunder pertain to the New Mexico Emergency School Tax reimbursement portions of the rates.[2]

In support of its proposal, Sunray states that the settlement rates, refunds, moratorium periods and other provisions thereof, not specifically noted herein, are in the public interest in that they are reasonable, and will provide price stability for a long period of time for natural gas moving in interstate commerce.

With respect to refunds, the parties to the settlement conferences utilized cost of service studies and company revenues to determine Sunray's revenue-cost relationship. These studies indicate that it is appropriate that we require that refunds should be computed for sales made on and after December 31, 1962. Applicable interest shall be paid on all of the refunds through December 31, 1964. Such refunds will be approximately $2,000,000, exclusive of interest. Sunray's future revenues will be decreased approximately $1,400,000 annually as a result of the settlement.

Sunray's total refund obligation under the settlement shall be computed as hereinbefore described. For the purpose of distributing the total refunds amount, Sunray shall compute: (1) The excess revenue collected (subject to refund) above the settlement rate under each rate schedule to January 1, 1965: (2) The total of all excess revenues collected under (1) above. The total refund amount shall be refunded to each purchaser (where collections have been made subject to refund) in the proportion that each rate schedule's excess revenue computed under (1) above bears to the total excess revenue computed under (2) above. When the refund obligation is determined, such refund shall be first applied to Sunray's sales in the most recent month and then to each preceding month until the full refund amount under that rate schedule is made.

The purchasers of gas under the various rate schedules to which this settlement proposal relates are all natural gas pipeline companies subject to our jurisdiction under the Natural Gas Act, and many of such purchasers in turn have customers who are natural gas pipelines. Some of these pipeline customers of Sunray or Sunray's customers are required under express provisions of outstanding orders of this Commission to flow-through to their jurisdictional customers all or any part of the refunds they may receive from Sunray as a result of this settlement; others may choose so to do in the absence of such express provisions. For all of the reasons set forth in our order in Humble Oil & Refining Company Docket Nos. G-9287 and G-9288, *et al.* 32 FPC 49 (order issued July 8, 1964) we shall require Sunray to retain the amounts of refund ordered herein until further order directing the nature of their disposition, and also to submit within 45 days of this order to the Commission and each jurisdictional customer a detailed report setting out, by purchasers, the amount of refund related to each rate schedule, the volume of gas sold thereunder and the period covered. We shall also by separate action direct each of the pipeline purchasers within ten days from the receipt of such report, to submit a report of their own setting forth whether they intend to pass on all or part of such refund amounts to their jurisdictional customers and the names of such customers and amounts of refund each would receive, or, if they claim the right to retain any portion of the refunds, a brief statement as to the legal or equitable basis for such claim. In the event such reports indicate that the refunds will flow-through to ultimate consumers or distribution companies not subject to the Commission's jurisdiction, the Commission will authorize the release of such refund sums by Sunray (unless a state regulatory authority after notification of the sum to be made available to a company subject to its regulatory jurisdiction asks us to defer releasing the funds until it can determine their ultimate disposition). In the event a pipeline purchaser from Sunray (or a pipeline customer of such a pipeline) indicates that it is asserting a claim to retain substantial refund sums the Commission will by further order prescribe the procedure for determining the relative rights to such funds of such pipeline or its customers.

---

[2] Sunray proposes that 4(e) proceedings involving Rate Schedule Nos. 109, 161 and 189 (Docket Nos. RI63-482, RI63-488, RI64-381 and RI64-390) be settled as to all questions except the proper reimbursement of the New Mexico Emergency School Tax, which became effective April 1, 1963.

Settlement rates which are exceptions to the applicable area ceiling are proposed by Sunray for a sale to United Gas Pipe Line Company (United) in the Gibson and East Gibson Fields, Terrebonne Parish, under Sunray's FPC Gas Rate Schedule No. 186, and two sales to Transcontinental Gas Pipe Line Corporation (Transco), one being a sale in the South Duson Field, Lafayette Parish, under Sunray's FPC Gas Rate Schedule No. 215, and the other a sale in the Church Point Field, Acadia Parish, under Sunray's FPC Gas Rate Schedule No. 216. Each of the sales are made in South Louisiana. The circumstances surrounding the sale to United are substantially the same as those we considered in *Sinclair Oil & Gas Company*, Docket Nos. G–9291, G–9292, *et al.*, 30 FPC 5, where we there approved the same settlement rate for a sale to United in the same field as Sunray herein proposes. Therefore, we shall approve Sunray's proposal to reduce the currently effective rate of 23.3¢ per Mcf to 18.5¢ per Mcf for this sale.

As to the sales to Transco, Sunray proposes to reduce the currently effective rates of 23.55¢ per Mcf to 18.0¢ per Mcf. The permanently certificated initial rate for each of these sales is 17.5¢ per Mcf. As justification for approval of settlement rates above the applicable increased rate ceiling, or the last firm rate, Sunray cites the fact that it agreed to elimination of the indefinite pricing provisions from its contracts with Transco when such contracts were renegotiated in 1961. Sunray states that such elimination prevented favored-nation increases in rates paid by Transco for its purchases of natural gas in the area from other producers. Additionally, Sunray states that the renegotiated contracts were for terms of twenty years which were to run until 1974 and 1975, and that by renegotiation it agreed to new twenty-year contracts to expire in 1981, thus, in effect, extending the old contracts for a period of approximately seven years in addition to eliminating the indefinite pricing provisions. However, in no past producer rate settlements which we have approved, have exceptions to the applicable area ceilings been made solely on the grounds of past elimination of indefinite pricing provisions. In fact, a similar proposal was made in *Shell Oil Company, et al.*, Docket No. G–9446, *et al.*, 28 FPC 257, for a sale by Shell in South Louisiana under its FPC Gas Rate Schedule No. 153, and we there conditioned our approval of Shell's settlement proposal to require that the settlement rate should conform to the area ceiling. Indeed, it should be noted that in *Shell* it proposed to eliminate the indefinite pricing provisions as a part of its proposal, and only if we approved the proposed settlement rate. We stated in *Shell* that although we recognized the desirability of a firm rate over an extended period of time, we did not find it sufficiently persuasive to warrant a breach of the applicable ceiling (*ibid.*, p. 259). Here, we do not have the elimination of the indefinite pricing provisions proposed as a part of the settlement, but have merely the fact that they were removed in the past as a part of contract renegotiations as justification for departure from our established policy.

For the reasons set forth in our order in *Shell*, and also because we are asked here to approve a settlement rate which is 0.5¢ per Mcf above the initial rate, which is itself above the prescribed increased rate ceiling, we do not find that the reasons given for a departure from past policy warrant our so doing. Additionally, there is no instance where such an exception has been approved because of the extension of the term of a renegotiated contract with or without elimination of such pricing provisions.

We shall therefore condition our approval of Sunray's settlement proposal to require it to charge a settlement rate of 17.5¢ per Mcf, the initial rate, for its sales of natural gas to Transco under its FPC Gas Rate Schedule Nos. 215 and 216, subject to the filing moratorium on rate increases until January 1, 1968.

The settlement proposal includes rates for which issuance of related permanent certificates is pending, some of which are for sales presently being made under temporary certificates. We shall set such applications for abridged hearing in accordance with Section 7 of the Natural Gas Act, providing that the settlement rate, in each instance, shall be the initial rate.

Our approval of Sunray's proposal results in Sunray refunding approximately 56% of the amounts it has collected subject to refund above the settlement rates and the reduced rates of approximately $1,400,000 annually will constitute disallowance of approximately 46% of the increased rates currently being collected in Section 4(e) proceedings. In addition, approximately $69,000 annual reduction will result from our approval of a settlement rate for one sale where the settlement rate is below the "last firm rate", and no Section 4(e) proceeding is pending therefor.[3]

We believe that the principles underlying the present settlement proposal, as conditioned herein, are consistent with those utilized in previous major independent producer rate settlements.

Our action herein should not be construed as constituting approval of any future rate increases, if any, that may be filed under the subject rate schedules, and is without prejudice to any findings or order of the Commission in future proceedings, including area rate or similar proceedings, involving Sunray's rates and rate schedules.

The Commission finds:

The proposed settlement of the subject proceedings on the basis described herein as more fully set forth in the settlement proposal filed by Sunray on December 29, 1964, is in the public interest and it is appropriate in carrying out the provisions of the Natural Gas Act, that it be approved and made effective as hereinafter ordered, and good cause exists for approving the settlement rates, for severing and terminating certain proceedings and providing for refunds.

The Commission orders:

(A) The settlement of these proceedings on the basis of the settlement proposal, filed by Sunray on December 29, 1964, and as conditioned herein, is approved.

(B) The applicable settlement rates set out in Appendix A hereto, and those involving Section 4(e) proceedings set forth in Appendix B hereto, are approved, subject to the conditions herein, and such rates shall be effective as of January 1, 1965. Sunray shall substitute in lieu of its proposed settlement rate of 18¢ per Mcf a rate of 17.5¢ per Mcf under its FPC Gas Rate Schedule Nos. 215 and 216, which shall be subject to the filing moratorium on rate increases until January 1, 1968.

---

[3] Sunray's Rate Schedule No. 159 which involves a sale to United in the Ridge Field, Lafayette Parish, South Louisiana.

(C) The approved settlement rates shall be applicable, during the moratoria periods herein provided for, to all sales of natural gas from all acreage dedicated as of the date of issuance of this order under each of the rate schedules currently on file with the Commission whether such sales are made by Sunray, its successors or assignees.

(D) Sunray shall compute the difference between the rates collected subject to refund and the related settlement rates for the period from December 31, 1962 to the date of this order, together with interest as specified by order of the Commission in each docket to December 31, 1964. Sunray shall within 45 days from the date of this order submit a report to the Commission, and serve a copy on each of the purchases involved, setting out by purchasers the amount of refunds related to each rate schedule (showing separately the principal and applicable interest), the bases used for such determination, the periods covered, the proposed distribution of such amounts and letters from the purchasers agreeing to the correctness of such amounts.

(E) Sunray shall retain the amounts shown in the report required under paragraph (D) above, subject to further order of the Commission directing the disposition of those amounts.

(F) If Sunray elects to commingle these retained refunds with its general assets and use them for its corporate purposes, it shall pay interest thereon at the rate of 6% per annum on all funds thus available from March 19, 1965 to the date on which they are paid over to the person ultimately determined to be entitled thereto in a final order of the Commission.

(G) If Sunray elects to deposit the retained refunds in a special escrow account, Sunray shall tender for filing on or before March 19, 1965, an executed Escrow Agreement, conditioned as set out below, accompanied by certificate showing service of a copy thereof upon each of its jurisdictional customers. Unless notified to the contrary by the Secretary within 30 days from the date of filing thereof, the Escrow Agreement shall be deemed to be satisfactory and to have been accepted for filing. The Escrow Agreement shall be entered into between Sunray and any bank or trust company used as a depositor for funds of the United States Government and the agreement shall be conditioned as follows:

(1) Sunray, the bank or trust company, and the successors and assigns of each, shall be held and formally bound unto the Federal Power Commission for the use and benefit of those entitled thereto, with respect to all amounts and the interest thereon deposited in a special escrow account, subject to such Agreement, and such bank or trust company shall be bound to pay over to such person or persons as may be identified and designated by final order of the Commission and in such manner as may be therein specified, all or any portion of such deposits and the interest thereon.

(2) The bank or trust company may invest and reinvest such deposits in any short-term indebtedness of the United States or any agency thereof or in any form of obligation guaranteed by the United States which is, respectively, payable within 120 days as the said bank or trust company in the exercise of its sound discretion may select.

(3) Such bank or trust company shall be liable only for such interest as the invested funds described in Paragraph (2) above will earn and no other interest may be collected from it.

(4) Such bank or trust company shall be entitled to such compensation as is fair, reasonable and customary for its services as such, which compensation shall be paid out of the escrow account to such bank or trust company. Said bank or trust company shall likewise be entitled to reimbursement for its reasonable expenses necessarily incurred in the administration of this escrow account, which reimbursement shall be made out of the escrow account.

(5) Such bank or trust company shall report to the Secretary quarterly, certifying the amount deposited in the trust company for the quarterly period.

(H) The pending certificate proceedings set out in Appendix B hereto shall not be terminated on the basis of the approval of the settlement proposal, but shall be determined after hearing in accordance with Section 7 of the Natural Gas Act.

(I) Sunray shall, over the signature of a responsible officer, file with the Commission, within 30 days from the date of the issuance of this order, an original and one copy of its acceptance or rejection of the terms and conditions of this order, including specifically the rate as conditioned herein, and the subsequent increased refund requirements under its Rate Schedule Nos. 215 and 216.

(J) Any party to the proceedings or settlement negotiations having objections to the terms of this order shall within 30 days from the date of issuance of this order set forth such objections in writing to the Commission (original and one copy), and by serving copies on the other parties.

(K) If as a result of any objections filed pursuant to paragraph (J) hereof, the Commission by subsequent order changes Sunray's duties and obligations hereunder, Sunray's acceptance of this settlement order shall not be binding on it without its express agreement.

(L) Within 90 days from the date of this order, Sunray shall make such filings under its rate schedule as are required to make effective the terms of the settlement proposal as modified, including those Rate Schedules in Appendix B.

(M) Upon full compliance by Sunray with all the terms and provisions of this order, the Section 4(e) proceedings listed in Appendices A and B hereto shall terminate except those related to Rate Schedule Nos. 109, 161 and 189 (Docket Nos. RI63–482, RI63–488, RI64–381 and RI64–390) insofar as those proceedings relate to the proper tax reimbursement of the New Mexico Emergency School Tax; and except for the interests of Ashland Oil & Refining Company and Seneca Oil Company in Docket No. RI62–178, insofar as that proceeding pertains to the sale of natural gas to Northern Natural Gas Company in the Southeast Dower Field, Beaver County, Oklahoma, from properties assigned to said producing companies by Sunray.

(N) Upon termination of the Section 4(e) proceedings listed in Appendix C hereto, in accordance with Paragraph (M) above, said proceedings shall be severed from the consolidated proceedings in Docket Nos. AR61–2, AR64–1, and AR64–2, respectively; the Section 7(c) proceedings listed in Appendix C are hereby severed from the consolidated proceeding *Sunray DX Oil Company, et al.*, Docket No. G–4281, *et al.*, subject to final determination in Docket No. R–200.

(O) This order is without prejudice to any findings or orders which have been or may be made hereafter by the Commission, and is without prejudice to claims or contentions which may be made by Sunray, the Commission staff, or any affected party hereto, in any proceedings now pending, including area rate or similar proceedings, or hereafter instituted by or against Sunray or any other companies, person or parties affected by this order.

APPENDIX A

SUNRAY DX OIL COMPANY

FPC RATE SCHEDULES-DOCKET NO. G-6822, ET AL.

Rate schedule No.	Field (area)	Purchaser	Docket No.		Cents per Mcf at area pressure base (subject to Btu adjustment where applicable)		
			Certificate	Sec. 4(e) rate increase	Not subject to refund	Rate in effect 10/1/64	Settlement rate***
	Arkansas—15.025 psia:						
187	Capps Plant	Arkansas-Louisiana	G-14861		*9.45	9.45	9.45
	Colorado—15.025 psia:						
151	Little Hoot	Kansas-Nebraska	G-13349	RI63-266	*12.82622 [2] 14.0	13.7424 [2] 15.0	[1] 13.7424
226	Minto	Kansas-Nebraska	CI63-554		[2] *10.0	[2] 10.0	[2] 10.0
	Kansas—14.65 psia:						
61	Hugoton	Cities Service	G-5178		10.7196	10.7196	10.7196
102	Hugoton	Colorado Interstate	G-4268	G-17883, RI64-326	*12.0	13.5	12.0
112	Hugoton	Kansas-Colorado	G-9782	RI61-119	*12.0	13.0	12.0
116	Greenwood-Sparks	Colorado Interstate	G-10370, G-12566.[3]	G-17524, RI64-440	*15.0	17.0	**15.0
117	Leslie Pool Area	Panhandle Eastern	G-10532, G-15115.[4]	RI61-498	*15.0	16.0	15.0
120	Hardtner-Rhodes	Cities Service	G-10757	G-20062	*12.0	13.0	12.0
129	Harper Ranch	Northern Natural	G-11762, G-16010.[3]	RI62-178	*15.0	16.0	15.0
141	Embry Area	Northern Natural	G-12901	RI62-519	*13.5	14.5	13.5
115	Harper Ranch	Northern Natural	G-13125	RI62-178	*14.0	15.0	14.0
164	Hugoton	Northern Natural	G-14288	RI61-117	*12.0	17.0	12.0
174	Hugoton	Colorado Interstate	G-3806	G-18173, RI63-202	12.0	13.5	12.0
177	Hugoton	Colorado Interstate	G-18614	RI64-597	*12.5	13.5	12.5
180	Hugoton	Kansas-Colorado	G-3808	G-18891, RI63-202	12.0	13.5	12.0
184	South Hopewell	Panhandle Eastern	G-19409	RI64-686	*15.0	[5] 15.0	15.0
204	Hugoton	Panhandle Eastern	G-5176		11.0	11.0	11.0
205	Dower	Cities Service	CI61-133		*13.0	13.0	13.0
214	Harper Ranch	Northern Natural	CI62-462		*16.0	16.0	16.0
217	Dower	Cities Service	CI61-1385		*13.0	13.0	13.0
218	Hugoton	Cities Service	CI61-1395		*12.0	12.0	12.0
220	Hugoton	Cities Service	CI62-286		*12.0	12.0	12.0
242	Various	Kansas-Nebraska	CI63-1407		*12.5	12.5	12.5
	Louisiana-North—15.025 psia:						
9	Athens	Arkansas-Louisiana	G-5932		14.32	14.32	14.32
47	Bear Creek	Arkansas-Louisiana	G-6050		12.37	12.37	12.37
51	Cotton Valley	United Gas	G-6057		12.55076	12.55076	12.55076
68	Cotton Valley	United Gas	G-6045		13.05076	13.05076	13.05076
78	Sentell	Arkansas-Louisiana	G-6056		13.961	13.961	13.961

146	Cotton Valley	United Gas	G-13094		12.55076	12.55076	12.55076
169	Carlton Area	Texas Gas Transmission	G-16716		*18.25	18.25	18.25
179	Blackburn Area	Texas Gas Transmission	G-18294		*18.25	18.25	18.25
188	Rocky Mount	Arkansas-Louisiana	G-20092		13.961	13.961	13.961
191	Calhoun	United Gas	CI60-85		*18.75	18.75	18.75
203	Calhoun	Texas Gas Transmission	CI60-800		*18.75	18.75	18.75
	Louisiana-South—15.025 psia:						
13	Egan	Transcontinental Gas	G-6048	G-6822, G-17727	*9.79715	23.55	15.75
132	Coles Gulley	United Fuel Gas	G-11877	G-13741, G-16484, G-19905, RI61-93, RI62-32, RI63-91, RI64-172, RI65-238.	*18.3	[6] 21.1	18.3
159	Ridge Area	United Gas	G-12211		22.25	22.25	18.5
178	Valentine	United Fuel Gas	G-13011	G-19904, RI61-93, RI62-32, RI63-91, RI64-172.	*19.1	21.1	19.1
186	Gibson	United Gas	G-6053	G-19906	10.497	23.3	18.5
197	South Bearhead Creek	Trunkline	CI60-353		*18.3	18.3	18.3
215	South Duson	Transcontinental Gas	G-8286	G-17726, RI61-462 [22]	17.5	23.55	17.5
216	Church Point	Transcontinental Gas	G-9265	G-17727, RI61-463 [23]	17.5	23.55	17.5
243	Egan	Texas Gas Transmission	CI64-639		*12.7965	12.7965	12.7965
	Mississippi—15.025 psia:						
80	Pistol Ridge-Maxie	United Gas	G-9043	G-20187	*20.0	23.0	20.0
	New Mexico-San Juan—15.025 psia:						
109	Gallegos Canyon (Pictured Cliffs).	El Paso	G-9257	(7)	11.00123	[8] 12.22965	[8] [24] 12.23085
161	Twin Mounds (Dakota)	El Paso	G-15800	(9)	12.0	13.2486	[10] [24] 13.0
189	Bisti	El Paso	G-18774	(11)	*13.0	14.26775	[24] 13.0
238	Basin (Dakota)	South Union	CI64-158	RI64-390	*13.0	14.2678	13.0
	Oklahoma-Carter Knox—14.65 psia:						
193	Deep Knox	Lone Star	CI60-163	RI63-436	*16.8	17.9	16.8
	Oklahoma-Panhandle—14.65 psia:						
57	Keyes	Colorado Interstate	G-5182	G-17316, RI64-326	*15.0	17.0	**15.0
58	Hugoton	Northern Natural	G-5181	G-14931	*9.8262	12.0	11.0
219	Mocane	Panhandle Eastern	CI61-1819		*17.0	17.0	17.0
59	Floris	Michigan-Wisconsin	G-5180		*10.0	10.0	10.0
65	Guymon-Hugoton	Northern Natural	G-5173	G-14931	*9.8262	12.0	11.0
73	Keyes	Colorado Interstate	G-8711	G-17316, RI64-326	*15.0	17.0	**15.0
111	Keyes	Colorado Interstate	G-6606	G-17316, RI64-347	*15.0	17.0	**15.0
114	Camrick	Natural Gas P.L	G-10325	G-11992, RI63-57, RI64-617	*16.0	17.6	16.0
119	Keyes	Panhandle Eastern	G-10776	RI60-125	*15.0	16.0	**15.0
123	N. E. Glenwood	Cities Service	G-10943	RI62-178	*12.0	13.0	12.0
135	Camrick	Natural Gas P.L	G-12400	G-15177, G-17880, RI60-131, RI61-356, RI62-325, RI63-341, RI64-617.	*16.2	17.6	16.2
138	Laverne	Colorado Interstate	G-11122	RI62-502	*15.0	16.0	**15.0
152	Beaver County, Okla. and Ochiltree County, Texas area.[12]	Northern Natural	G-13634	RI61-119, RI62-178 [25]	*15.5	17.5	15.5

See footnotes at end of table.

APPENDIX A—Continued

SUNRAY DX OIL COMPANY

FPC RATE SCHEDULES-DOCKET NO. G-6822, ET AL.

Rate schedule No.	Field (area)	Purchaser	Docket No.		Cents per Mcf at area Pressure base (subject to Btu adjustment where applicable)		
			Certificate	Sec. 4(e) rate increase	Not subject to refund	Rate in effect 10/1/64	Settlement rate***
207	Guymon-Hugoton	Cities Service	G-3815		11.0	11.0	11.0
162	Camrick	Natural Gas P.L.	G-15520	G-17880, RI60-131, RI61-360, RI62-325, RI63-341, RI64-617.	*16.4	17.6	16.4
166	Guymon-Hugoton	Northern Natural	G-16104	RI63-436	*12.0	13.0	12.0
167	Camrick	Natural Gas P.L.	G-16134	RI63-38, RI64-66, RI64-617.	*16.0	17.6	16.0
170	Camrick	Natural Gas P.L.	G-17032	G-18097, RI60-131, RI61-360, RI62-325, RI63-341, RI64-617.	*16.4	17.6	16.4
165	Camrick	Panhandle Eastern	G-14347	G-16317, G-17881, RI60-131, RI61-360, RI62-325, RI63-341, RI64-617.	*16.0	17.4	16.0
223	Doby Springs	Northern Natural	CI63-151		*15.0	15.0	**15.0
224	Various	Northern Natural	CI63-150		*17.0	17.0	17.0
228	Laverne	Colorado Interstate	CI63-889		*17.0	17.0	17.0
240	Southeast Como	Northern Natural	CI64-555		*17.0	17.0	17.0
241	Southeast Como	Northern Natural	CI64-543		*15.0	15.0	15.0
211	Various	Michigan-Wisconsin	CI61-1147		*17.0 *15.0	17.0 15.0	** [13] 17.0 ** [13] 15.0
	Oklahoma-Other—14.65 psia:						
60	Doyle	Lone Star Gas	G-5179	RI65-226	11.0	[21] 11.0	[1] 12.0
69	West Edmond	Cities Service	G-6046		10.5	10.5	10.5
106	West Edmond	Cities Service	G-3816		10.5	10.5	10.5
134	Eureka District	Cities Service	G-10706, G-16444	G-20062	*12.0	13.0	12.0
143	Northwest Avard	Cities Service	G-12959	RI63-51	*12.0	13.0	12.0
194	East Kremlin	Arkansas-Louisiana	CI60-205	RI63-341	*11.0	12.0	[1] 12.0
222	Ringwood	Oklahoma Natural Gathering & National Fuels.	CI62-1412		*11.0	11.0	11.0
229	Northeast Waynoka	Cities Service	CI63-1118		*13.0	13.0	13.0
232	Southeast Custer City	Arkansas-Louisiana	CI64-40		*15.0	15.0	15.0
233	Anthon	Arkansas-Louisiana	CI64-32		*15.0	15.0	15.0
234	Lacy	Arkansas-Louisiana	CI64-33		*15.0	15.0	15.0
235	Thomas	Arkansas-Louisiana	CI64-34		*15.0	15.0	15.0
237	Northeast Trail	Panhandle Eastern	CI64-137		*15.0	15.0	**15.0
239	North Cooper	Arkansas-Louisiana	CI64-261		*15.0	15.0	15.0
244	Thomas	Natural Gas P.L.	CI64-835		*15.0	15.0	15.0
245	North Enid	Arkansas-Louisiana	CI64-875		*12.0	12.0	12.0
246	Numa	CRA, Inc.	CI64-1462		*11.0	11.0	11.0

	Texas-RRC District No. 1—14.65 psia:						
208	North Hostetter	Tennessee Gas	G-9530	RI61-323, RI65-182	14.6	17.24347	[1][14] 15.0
	Texas-RRC District No. 2—14.65 psia:						
2	South Cottonwood Creek	Texas Eastern	G-3885		12.1344	12.1344	12.1344
5	Placedo, etc	Tennessee Gas	G-5123	G-17078, RI64-349	11.02818	18.0	[1][15] 15.0
6	Wyrick	Tennessee Gas	G-5124	G-17078	11.02818	15.3333	[16] 14.0
7	McFaddin	United Gas	G-5931		13.1664	13.1664	13.1664
18	Hordes Creek	United Gas	G-4952		7.596	7.596	7.596
19	Boyce, Brandt, etc	United Gas	G-4948		13.2002	13.2002	13.2002
20	North McFaddin	United Gas	G-5175	RI62-196, RI63-351	13.1348	15.6	[1] 15.0
21	Marshall	United Gas	G-4954		13.2002	13.2002	13.2002
22	Burnell	United Gas	G-4946		14.0	14.0	14.0
24	Mineral	Transcontinental Gas	G-4912		9.779972	9.779972	9.779972
25	Boyce	United Gas	G-4949		13.2002	13.2002	13.2002
26	Brandt	United Gas	G-4950		13.2002	13.2002	13.2002
30	Slick-Wilcox	United Gas	G-4945		13.2002	13.2002	13.2002
36	Boyce & Brandt	United Gas	G-4947		13.2002	13.2002	13.2002
41	South Mineral	Transcontinental Gas	G-4917		9.779972	9.779972	9.779972
42	Cabeza Creek	United Gas	G-5134		13.2002	13.2002	13.2002
43	Slick-Wilcox	United Gas	G-4951		13.2002	13.2002	13.2002
44	Goebel	Transcontinental Gas	G-4919		9.779972	9.779972	9.779972
53	Keeran-North Keeran	United Gas	G-6052	RI62-196, RI63-351	9.1024	15.6	[1] 15.0
70	South Porter	United Gas	G-6873		13.1664	13.1664	13.1664
76	McFaddin	United Gas	G-8826		13.1664	13.1664	13.1664
79	North Charco	United Gas	G-8907		13.1664	13.1664	13.1664
124	Southeast Charco	Texas Eastern	G-11926		10.51648	10.51648	10.51648
130	Burnell	United Gas	G-11760		*7.0704	7.0704	7.0704
137	Yoward	Texas Eastern	G-12784		10.9206	10.9206	10.9206
172	East Cabeza Creek	United Gas	G-17489		13.1664	13.1664	13.1664
190	North LaWard	United Gas	CI60-42	RI63-385	*14.1792	15.1920	[1] 15.0
202	Ramirena	Valley Gas Transmission	CI60-543		*14.0	14.0	14.0
227	Karon	Texas Eastern	CI63-721		12.0	12.0	12.0
	Texas-RRC District No. 3—14.65 psia:						
17	Sheridan	Iroquois Gas	G-5133	G-13470, RI62-32	16.65853	18.6776	16.65853
37	North Lissie	Tennessee Gas	G-5125	G-17284, RI64-428	13.37125	19.11402	[1] 15.0
198	Cypress Creek	Trunkline	CI60-377		*15.0	15.0	15.0
	Texas-RRC District No. 4—14.65 psia:						
1	Edinburg	Tennessee Gas	G-3884	G-20000, RI60-303, RI65-182.	12.12268	17.24347	[1][14] 15.0
3	Premont	Tennessee Gas	G-3886	G-19988, RI60-304, RI65-183.	12.12268	17.24347	[1][16][17] 15.0
23	La Gloria	Transcontinental Gas	G-5135		11.1485	11.1485	[18] 11.1485
45	Mustang Island-Red Fish Bay.	United Gas	G-4953	G-13586, RI63-164	12.645	17.7478	[19] 14.6

See footnotes at end of table.

APPENDIX A—Continued

SUNRAY DX OIL COMPANY

FPC RATE SCHEDULES-DOCKET NO. G-6822, ET AL.

Rate schedule No.	Field (area)	Purchaser	Docket No.		Cents per Mcf at area pressure base (subject to Btu adjustment where applicable)		
			Certificate	Sec. 4(e) rate increase	Not subject to refund	Rate in effect 10/1/64	Settlement rate***
72	Beaurline	Tennessee Gas	G-8663	G-20000, RI60-303, RI65-182.	*12. 12268	17. 24347	[1] [14] 15. 0
74	Rincon-Flores	Tennessee Gas	G-8791	G-20000, RI60-303, RI65-182.	*12. 12268	17. 24347	[1] [14] 15. 0
75	El Panal	Tennessee Gas	G-8825	G-19988, RI60-304, RI65-183.	*12. 12268	17. 24347	[17] 14. 0
154	Premont	Coastal States	G-13365		9. 7672	9. 7672	9. 7672
171	Northwest Corpus Channel.	United Gas	G-17461		15. 0	15. 0	15. 0
175	Seeligson	Tennessee Gas	G-3887	G-19905, RI60-303, RI65-182.	12. 12268	17. 24347	[14] [19] 14. 6
185	North Monte Christo	South Texas Natural	G-19511	RI64-11	*15. 0	16. 0	15. 0
199	Javelina	South Texas Natural	CI60-428		15. 0	15. 0	15. 0
	Texas-RRC District No. 6—14.65 psia:						
85	Rhodessa	Arkansas-Louisiana	G-2980		6. 6440	6. 6440	6. 6440
86	Carthage	Texas Gas Transmission	G-2991		11. 6288	11. 6288	11. 6288
115	Carthage	Arkansas-Louisiana	G-10326		12. 7566	12. 7566	12. 7566
209	Tecula	United Gas	CI61-1088		10. 8876	10. 8876	10. 8876
213	Troup	United Gas	CI61-1229		10. 8880	10. 8880	10. 8880
247	Penn-Griffith	Lone Star	CI65-134		*14. 49	14. 49	14. 49
	Texas-RRC District No. 9—14.65 psia:						
150	Wise County Area	Natural Gas P.L.	G-4281	RI61-260, RI64-347	*13. 25	15. 25	[20] **14. 5
	Texas-RRC District No. 10—14.65 psia:						
118	North Hansford	Northern Natural	G-10621	RI62-178	16. 5	17. 5	16. 5
152	Ochiltree County, Tex. and Beaver County, Okla.[12]	Northern Natural	G-13634	RI61-119, RI62-178	*15. 5	17. 5	15. 5
153	Hansford County	Northern Natural	G-13614	RI62-175	*16. 5	17. 5	16. 5
	Utah—15.025 psia:						
225	Diamond Ridge	Grand Valley Transmission Co.	CI62-1478		*12. 0	12. 0	*12. 0

*Initial Rate.

**Rate subject to upward Btu adjustment.

***The settlement rates set out herein, unless otherwise noted, are base rates, subject to reductions in the manner and in the amounts set out in the respective rate schedules, where applicable under conditions of sale and/or delivery.

[1] Sunray to delete any favored-nation, price redetermination and fixed price escalation provisions from the rate schedule.

[2] Rate at contract pressure base, 16.4 psia.

[3] Supplement adding acreage.

[4] Supplement adding acreage in Beaver County, Oklahoma.

[5] 16.0¢ rate in effect 11–1–64, Docket RI64–686.

[6] 21.5¢ rate suspended until 4–1–65, Docket RI65–238.

[7] The last firm rate of 11.00123¢ for this rate schedule (109) consists of a 11.0¢ base rate and 0.00123¢ tax reimbursement. In RI63–482, a rate of 11.25286¢ was made effective, consisting of 11.0¢ base rate and 0.25286¢ tax reimbursement. On January 1, 1964, the rate became 12.23085¢ under the contract, consisting of 12.0¢ base and 0.23085¢ tax reimbursement, though through error, a rate of 12.22965¢ was filed in RI64–381 (See Footnote 8). The computation of tax reimbursement is, of course, based upon Sunray's construction of the contract.

[8] The proposed settlement rate represents a corrected computation of the current contract rate, inclusive of tax reimbursement, pursuant to Sunray's construction of the contract. The rate shown in effect 10–1–64 is the filed rate, which contains an arithmetical error in computation of current contract rate.

[9] The last firm rate of 12.0¢ for this rate schedule (161) consists of a 12.0¢ base rate only. In RI63–488, a rate of 12.2295¢ became effective, consisting of 12.0¢ base rate and 0.2295¢ tax reimbursement. In RI64–390, the rate became 13.2486¢, consisting of 13.0¢ based and 0.2486¢ tax reimbursement. In addition, this contract provides a minimum guarantee of 1.0¢ per Mcf for liquids (See Footnote 10). The computation of tax reimbursement is, of course, based upon Sunray's construction of the contract.

[10] Sunray to delete the provision of the contract which guarantees 1.0¢/Mcf for liquids.

[11] The last firm rate of 13.0¢ for this rate schedule (189) consists of a 13.0¢ base rate only. In RI63–482, a rate of 13.24856¢ became effective consisting of 13.0¢ base rate and 0.24856¢ tax reimbursement. In RI64–390, the rate became 14.26775¢, consisting of 14.0¢ base and 0.26775¢ tax reimbursement. The computation of tax reimbursement is, of course, based upon Sunray's construction of the contract.

[12] Listed under both Oklahoma Panhandle and Texas RRC Dist. No. 10.

[13] 17.0¢ settlement rate for gas sold in Oklahoma Panhandle area and 15.0¢ settlement rate for gas sold in Oklahoma Other area.

[14] 17.0¢ rate in effect 11–2–64, Docket No. RI65–182.

[15] Sunray to amend its contract so as to extend the term to expire five (5) years from December 29, 1964.

[16] Abandonment authorized in Docket No. CI62–368.

[17] 17.0¢ rate in effect 11–2–64, Docket No. RI65–183.

[18] Rate stated at 16.7 psia.

[19] Sunray to delete any favored-nation or price redetermination provisions in the rate schedule.

[20] Rates include 0.25¢/Mcf reimbursement for dehydration which is paid by seller to plant processor.

[21] 12.0¢ rate suspended until 3–5–65, Docket No. RI65–226.

[22] Rate increase suspended and made effective subject to refund in Rate Schedule No. 77, which was superseded by Rate Schedule No. 215.

[23] Rate increase suspended and made effective subject to refund in Rate Schedule No. 108 which was superseded by Rate Schedule No. 216.

[24] The Section 4(e) proceedings for this Rate Schedule shall remain open for the determination of the portion of the New Mexico Emergency School Tax which Sunray is entitled to by way of reimbursement.

[25] Docket No. RI62–178 terminated except for the interests of Ashland Oil and Refining Company and Seneca Oil Company.

APPENDIX B

SUNRAY DX OIL COMPANY

FPC RATE SCHEDULES-DOCKET NO. G-6822, ET AL.

CERTIFICATE APPLICATIONS, AMENDMENTS AND RELATED SECTION 4(e) INCREASES

Rate schedule No.	Field (area)	Purchaser	Docket No.		Cents per Mcf at area pressure base (subject to Btu adjustment where applicable)		
			Certificate	Sec. 4(e) rate increase	Not subject to refund	Rate in effect 10/1/64	Settlement rate***
	Kansas—14.65 psia:						
182	Leslie	Panhandle Eastern	G-19051 [1]	RI60-125	*15.0	16.0	**15.0
	Oklahoma-Panhandle—14.65 psia:						
138	Laverne	Colorado Interstate	G-11122 [1]	RI62-502	*15.0	16.0	[2] **15.0
155	Northeast Glenwood	Northern Natural	G-14143 [1]	RI62-519	*15.0	16.0	**15.0
163	Mocane	Colorado Interstate	G-16109 [1]	RI62-455	*15.0	17.0	**15.0
176	Laverne	Michigan-Wisconsin	G-18630 [1]		*17.0	17.0	**17.0
206	Various	Transwestern	G-18142		*17.0	17.0	17.0
212	Edith South	Michigan-Wisconsin	CI61-1201 [1]	RI64-440	*17.0 *15.0	19.5	[3] **17.0 [3] **15.0
	Oklahoma Other—14.65 psia:						
230	Northwest Avard	Panhandle Eastern	CI63-1154		*15.0	15.0	**15.0
	Texas-RRC District No. 4—14.65 psia:						
201	Jay Simmons	South Texas Natural	G-17899	RI64-11	*15.0	16.0	15.0
	Texas-RRC District No. 9—14.65 psia:						
150	Wise County Area	Natural Gas Pl	G-15148 [1] [4] G-4281 [1] [5]	RI61-260 RI64-347	*13.25	15.25	**14.5

---

*Initial Rate.

**Rate subject to upward Btu adjustment. Certificate, with respect to the Btu adjustment provision, shall be subject to ultimate disposition in Docket No. R-200, prospectively, from effective date of final order in Docket No. R-200.

***The settlement rates set out herein, unless otherwise noted, are base rates, subject to reductions in the manner and in the amounts set out in the respective rate schedules, where applicable under conditions of sale and/or delivery.

[1] Consolidated in Sunray DX Oil Company, *et al.*, Docket No. G-4281, *et al.*, certificate proceedings.

[2] Applicable only to acreage added by Supplement No. 4.

[3] Higher rate shown applicable to gas sold in Oklahoma Panhandle; lower rate applicable to gas sold in Oklahoma-Other.

[4] Applicable only to acreage added by Supplement No. 4.

[5] Applicable only to acreage added by Supplement No. 10.

APPENDIX C

SUNRAY DX OIL COMPANY

DOCKET NO. G-6822, ET AL.

Dockets in AR61-2		Dockets in AR64-1		Dockets in AR64-2	
Docket No.	Rate schedule No.	Docket No.	Rate schedule No.	Docket No.	Rate schedule No.
G-6822	13	G-11992	114	G-13470	17
G-13741	132	G-14931	58	G-13586	45
G-16484	132	G-14931	65	G-17078	5
G-17726	215 (77)	G-15177	135	G-17078	6
G-17727	13	G-16317	165	G-17284	37
G-17727	216 (108)	G-17316	57	G-19905	175 (4)
G-19904	178	G-17316	73	G-19988	3
G-19905*	132	G-17316	111	G-19988	75
G-19906	186 (54)	G-17524	116	G-20000	1
RI61-93	132	G-17880	135	G-20000	72
RI61-93	178	G-17880	162	G-20000	74
RI61-462	215 (77)	G-17881	165	RI60-303	1
RI61-463	216 (108)	G-17883	102	RI60-303	72
RI62-32	132	G-18097	170	RI60-303	74
				RI60-303	175
RI62-32	178	G-18173	174 (107)	RI60-304	3
RI63-91	132	G-18891	180 (90)	RI60-304	75
RI63-91	178	G-20062	134	RI62-32	17
		G-20062	120	RI62-196	20
		RI60-125	119	RI62-196	53
		RI60-125	182	RI63-164	45
				RI63-351	20
				RI63-351	53
				RI63-385	190
		RI60-131	135	RI64-11	185
		RI60-131	162	RI64-11	201
		RI60-131	165	RI64-349	5
		RI60-131	170	RI64-428	37
		RI61-117	164		
		RI61-119	112		
		RI61-119	152		
		RI61-356	135		
		RI60-360	162		
		RI61-360	165		
		RI61-360	170		
		RI61-498	117		
		RI62-175	153		
		RI62-178	123		
		RI62-178	129		
		RI62-173	145		
		RI62-178	152		
		RI62-178	[1] 118		
		RI62-325	135		
		RI62-325	162		
		RI62-325	165		
		RI62-325	170		
		RI62-455	163		
		RI62-502	138		
		RI62-519	141		
		RI62-519	155		
		RI63-38	167		
		RI63-51	143		
		RI63-57	114		
		RI63-202	174 (107)		
		RI63-202	180 (90)		
		RI63-341	135		
		RI63-341	162		
		RI63-341	165		
		RI63-341	170		
		RI63-341	194		
		RI63-436	166		
		RI63-436	193		
		RI64-66	167		
		RI64-326	57		
		RI64-326	73		
		RI64-326	102		
		RI64-347	111		
		RI64-347	150		
		RI64-440	116		
		RI64-440	212		
		RI64-597	177		
		RI64-617	114		
		RI64-617	135		
		RI64-617	162		
		RI64-617	165		

See footnotes at end of table.

APPENDIX C—Continued

SUNRAY DX OIL COMPANY

DOCKET NO. G–6822, ET AL.

Dockets in AR61-2		Dockets in AR64-1		Dockets in AR64-2	
Docket No.	Rate schedule No.	Docket No.	Rate schedule No.	Docket No.	Rate schedule No.
		RI64-617	167		
		RI64-617	170		
		RI64-686	184		

( ) Number enclosed in parentheses is rate schedule number that has been superseded.
*Only insofar as S. La. sales concerned.

[1] Docket No. RI62-178 terminated except for the interests of Ashland Oil and Refining Company and Seneca Oil Company.

Section 7(c) proceedings to be severed from Docket No. G–4281, et al.

Docket No.	Rate schedule No.	Supplement No.
G–4281	150	10
G–15148	150	4
G–11122	138	4
G–14143	155	
G–16109	163	
G–18630	176	
G–19051	182	
CI61–1201	212	

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

VERMONT GAS SYSTEMS, INC., DOCKET NOS. CP65–141 AND CP65–142

ORDER DENYING INTERVENTION

(Issued January 29, 1965)

On November 17, 1964, Vermont Gas Systems, Inc. (Applicant) filed in Docket No. CP65–142 an application pursuant to Section 3 of the Natural Gas Act for authorization to import natural gas into the United States from Canada. Concurrently with said application Applicant filed in Docket No. CP65–141 an application pursuant to Executive Order No. 10485 for a permit authorizing the construction and operation of natural gas pipeline facilities at the international boundary between the United States and Canada near Highgate Springs, Vermont, to be used for the importation of natural gas. Applicant proposes to purchase from Trans-Canada Pipe Lines, Limited, and to import into the United States natural gas for distribution in Northwestern Vermont.

On December 28, 1964, Falcon Seaboard Drilling Company (Petitioner) filed in Docket Nos. CP65–141 and CP65–142 a petition pursuant to Section 1.8 of the Commission's Rules of Practice and Procedure for leave to intervene in said proceedings. Petitioner states that it and another company associated with it presently own or have options for oil and gas leases in northwestern Vermont, that it is presently drilling a test well in that area, and that "as a result of drilling operations presently conducted by it, it will be possible to make a reasonable estimate of the likelihood of finding natural gas in this area of Vermont within a reasonable period of time." Petitioner states further that Applicant's proposal for the importation of natural gas represents a direct, immediate and severe economic detriment to Petitioner as a prospective producer of natural gas and competitor for the natural gas market in Vermont.

Section 15(a) of the Natural Gas Act and Section 1.8(b) of the Commission's Rules of Practice and Procedure promulgated thereunder permit intervention by, *inter alia,* (1) competitors whose interest may be directly affected, not adequately represented by existing parties, and as to which interest a petitioner may be bound by the Commission's action in the proceeding, and (2) any other petitioner whose interest is of such nature that its participation may be in the public interest. Petitioner states that it will be bound by the Commission's action in the subject proceedings and aggrieved by the granting of orders as requested by Applicant. Although Petitioner describes itself as a prospective producer of natural gas and competitor for the natural gas market in Vermont, it does not hold itself out as presently ready and able to serve the market. Petitioner has no natural gas to offer for sale and has made no showing that if it ever were to develop natural gas in marketable quantities, grant of the present applications would substantially impair its ability to dispose of the gas at a fair price.

We are not here dealing with competition between pipelines to serve a market where a grant to one may in fact mean the exclusion of the other and where competition can be said to exist where two companies have the potential to bid for future market increments. See *United States* v. *El Paso Natural Gas Co.*, 376 U.S. 651. (Even in such situations, it should be noted, Section 157.11 of our Regulations under the Natural Gas Act provides that an applicant in order to secure comparative consideration must file its competing application not less than 15 days prior to the date of the hearing on the first filed application.) On the contrary, our entire experience has shown that the authorization of some producer sales does not impair the ability of other producers to sell marketable gas. If producers in the exploration or development stage of new operations could, without showing anything more, intervene in any application to bring gas into the general area of their activity it is clear that a serious and quite unnecessary road block would be set up against the efficient administration of the Natural Gas Act. The fact that the present situation involves a protest against applications under section 3 of the Act and Executive Order No. 10485 does not materially change the situation; there is no showing, and no reason to believe, that Applicant's importation of the specified amount of gas would preclude Petitioner from selling any gas it might subsequently develop in marketable quantities to Applicant, to say nothing of other potential purchasers in the area.

Aside from its claims as a potential "competitor" discussed above, the petition to intervene presents nothing to indicate that its grant or petitioner's participation in the proceeding will be in the public interest. Accordingly, we will deny the petition.

The Commission finds:

(1) Petitioner is not a competitor of Applicant's with an interest which may be directly affected and which is not adequately represented by existing parties and as to which petitioners may be bound by the Commission's action in these proceedings.

(2) It is not appropriate in the proper administration of the Natural Gas Act or in the public interest to allow Petitioner, Falcon Seaboard Drilling Company, to intervene in these proceedings.

The Commission orders:

The petition to intervene filed by Falcon Seaboard Drilling Company on December 28, 1964, be and the same is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

THE SUPERIOR OIL COMPANY v. TRUNKLINE GAS COMPANY, UNION OIL COMPANY OF CALIFORNIA, AND PAN AMERICAN PETROLEUM CORPORATION, DOCKET NO. CI65-300

ORDER DENYING MOTIONS TO DISMISS COMPLAINT UNDER SECTION 5(C) OF THE OUTER CONTINENTAL SHELF LANDS ACT; NOTICE OF AND SETTING PROCEDURES FOR HEARING OF COMPLAINT; AND DISPOSING OF APPLICATIONS FOR SUBPOENAS

(Issued February 1, 1965)*

On September 24, 1964, The Superior Oil Company (Superior) filed a complaint pursuant to Section 5(c)[1] of the Outer Continental Shelf Lands Act (67 Stat. 462) and Section 16 of the Natural Gas Act against Trunkline Gas Company (Trunkline), Union Oil Company of California (Union Oil), and Pan American Petroleum Corporation (Pan American), alleging discrimination arising out of the refusal by Trunkline to buy or transport gas produced by Superior from submerged lands within the vicinity of Trunkline's pipelines while at the same time purchasing natural gas from Union Oil and Pan American from adjoining acreage.

It appears that Trunkline now purchases and transports gas produced by Union Oil and Pan American in the Block 14 Field which is located within the Outer Continental Shelf. The complaint charges, *inter alia*, that Trunkline has discriminated against Superior by depriving Superior of its proportionate rights in the sale of natural gas from Block 14 Field, contrary to Section 5(c) of the Outer Continental Shelf Lands Act, and contrary to the conditions assumed by Trunkline in accepting right-of-way grants for the construction and operation of its natural gas pipelines from the Secretary of Interior. Superior states that it is willing and able to sell its proportionate share of the natural gas underlying the Block 14 Field to Trunkline on such nondiscriminatory terms and in such amounts as the Federal Power Commission may find reasonable.

Superior further alleges that Trunkline would not negotiate with Superior for the purchase and transportation of Superior's natural gas in Block 14 Field upon any terms. (This allegation is denied by Trunkline in its answer.) Superior asserts that the total volume of gas purchased by Trunkline has been produced from horizons and formations underlying Union and Pan American wells, which also underlie and are common with those to which Superior's wells and leases in Block 14 Field are drilled and completed. Superior sets forth its estimate of the total original recoverable natural gas reserves in all of the developed offshore blocks included within the Block 14 Field, and concludes that the proportionate ownership of the parties in interconnected reservoirs of said Block 14 Field, based upon original recoverable gas reserves underlying the leases of the parties is approximately one-third each, *i.e.*, Superior, Union and Pan American.

---

*Reconsideration denied by order issued March 24, 1965, 33 FPC 615.

[1] Section 5(c) of the Outer Continental Shelf Lands Act (OCSLA) provides that:

> Rights-of-way through the submerged lands of the Outer Continental Shelf, whether or not such lands are included in a lease maintained or issued pursuant to this Act, may be granted by the Secretary for pipeline purposes for the transportation of oil, natural gas, or other minerals under such regulations and upon such conditions as the application therefor and the survey, location and width thereof as may be prescribed by the Secretary, and upon the express condition that such oil or gas pipelines shall transport or purchase without discrimination, oil or natural gas produced from said submerged lands in the vicinity of the pipeline in such proportionate amounts as the Federal Power Commission, in the case of gas and the Interstate Commerce Commission, in the case of oil, may, after a full hearing with due notice thereof to the interested parties, determine to be reasonable, taking into account, among other things, conservation and the prevention of waste. Failure to comply with the provisions of this section or the regulations and conditions prescribed thereunder shall be ground for forfeiture of the grant in an appropriate judicial proceeding instituted by the United States in any United States district court having jurisdiction under the provisions of Section 4(b) of this Act.

Superior maintains further that Trunkline is obligated to purchase from Superior, Superior's proportionate share of the whole amount of gas Trunkline has agreed to purchase from Union and Pan American in said Block 14 Field, based upon the respective percentages of the total field recoverable gas reserves underlying the respective leases of said three producers, at the same price, delivery conditions and all other terms of the agreements with Union and Pan American. Superior represents that it will conform to the provisions of the Natural Gas Act and the regulations of this Commission thereunder, in connection with such sale as the Commission may herein see fit to require and authorize.

Answers and motions to dismiss the complaint were filed by all of the respondents. The various grounds for dismissal may be summarized as follows:

(1) Since Superior's leases are located in Zone 2, within the so-called "disputed area" the Federal Power Commission lacks authority to decide the question of whether Superior's leases are subject to the provisions of Section 5(c) of the OCSLA. Enforcement of the Outer Continental Shelf Lands Act must be held in abeyance until a definitive resolution has been reached in *United States* v. *Louisiana*, 363 U.S. 1 (1960) with respect to Louisiana's boundary.

(2) Superior has no standing to invoke the provisions of Section 5(c) of the OCSLA, since it had a purchaser, American-Louisiana (Am-La) ready, willing and able, to purchase its natural gas underlying Block 14 Field. Superior sought and received a certificate from this Commission, dated July 23, 1964, in Opinion No. 437, Docket No. G–6067, 32 FPC 241, to deliver and sell gas to Am-La at an initial price of 18½¢ per Mcf. Superior, however, rejected the certificate because it believed the initial price was too low. In these circumstances the defendants allege that Superior is manifestly employing a complaint under Section 5(c) as a device to attempt to secure a higher price for its gas. This allegation rests upon the fact that in its complaint Superior maintains that in order to be nondiscriminatory, Trunkline is obligated to purchase Superior's proportionate share of the whole amount of gas Trunkline has agreed to purchase from Union and Pan American in Block 14 Field, "at the same price, delivery conditions and all other terms of the agreements with Union and Pan Am." Since Trunkline is paying Pan American and Union for their Block 14 gas 19.5¢ per Mcf pursuant to the Commission's order of March 20, 1964, 31 FPC 616 (Pan American Petroleum Corporation, *et al.*, Docket No. G–15438, *et al.*) Superior would apparently contend that it too is entitled to 19.5¢ per Mcf. This price was a settlement rate in which Pan American and Union Oil were permitted to charge an initial price of 19.5¢ per Mcf for gas being newly certificated from certain deeper horizons in Block 14, and simultaneously agreed to reduce their effective rates of 22½¢ per Mcf for gas being sold from the "shallow rights" under permanent certificates issued prior to the establishment of ceilings for new gas in the Southern Louisiana area.

(3) Superior's leases are not located "in the vicinity" of Trunkline's pipeline within the meaning of those terms in Section 5(c) of the OCSLA and at

least one other natural gas pipeline is located substantially closer to Superior's leases than Trunkline. Additionally, Trunkline's pipeline does not run "through" or traverse leases held by Superior in the Offshore Vermilion Block 14 Field and therefore Trunkline cannot be required under Section 5(c) of the OCSLA to transport or purchase Superior's natural gas. Superior's remedy, if any, must be secured from pipelines with rights-of-way over its leases or at least from the pipeline which has pipeline facilities which are nearest to its lands, alleged to be Transco.

(4) Superior has waived its right to protest the certification by this Commission's order of May 22, 1959, of Union Oil's sales to Trunkline in Docket No. G–15486 and Pan American's sales to Trunkline in Docket No. G–15487 by its failure, after due notice, to petition to intervene in said docket.[3] Superior is barred by laches from asserting any claim against Union Oil, Pan American, and Trunkline under the OCSLA for the reason that the sales of gas of which it now complains were certificated by the Federal Power Commission and begun nearly five years ago. A decision by the Commission permitting Superior now collaterally to attack the valid and permanent certificates which were issued therein would retroactively violate the producers' rights under the Constitution of the United States and the Natural Gas Act.

(5) If Superior is seeking an order which would have the effect of compelling involuntary expansion or construction of additional facilities by Trunkline, Superior is seeking an order which this Commission may not lawfully issue under Section 7 of the Natural Gas Act.

We have concluded that none of the various reasons advanced for dismissing the complaint are sound and that the matter should be set for hearing as contemplated by the provisions of Section 5 of the Outer Continental Shelf Lands Act.

(1) The fact that an issue which is relevant to our determination is also pending before the Supreme Court cannot constitute grounds for dismissing the complaint. The OCSLA, and specifically Section 5 thereof, is presently in effect and Superior's rights to a Commission determination thereunder are not tolled by the absence of any Supreme Court resolution of the jurisdictional status of the lands in question, any more than rights under any other statute are in abeyance while the cases involving their constitutionality or meaning are pending before the Supreme Court. There is nothing in any of the decisions or orders of the Supreme Court throughout the Tidelands' litigation which directs or even suggests that agencies of the federal government refrain from taking actions required of them by the OCSLA pending the Court's resolution of the jurisdictional question left for its subsequent consideration.

Unlike some of the problems created by the unresolved contest between the United States and the State of Louisiana over title to the lands in question, the exercise of our responsibilities under Section 5 of the OCSLA cannot affect the relative rights of the United States and Louisiana to tax or other revenues from operations thereon. Moreover, it is to be noted that the United States and the State of Louisiana have worked out a mutually satisfactory arrangement under which operations may continue in the disputed area pending resolution of the jurisdictional issue. See agreement between United States and State of Louisiana pursuant to OCSLA, dated October 12, 1956.

If the jurisdictional question were the only issue involved in resolving Superior's complaint it could be contended that the Commission should defer setting the matter for hearing until the Supreme Court acts, though even in such circumstances Superior might well argue that it was entitled to an immediate Commission determination since only through such a first-step determination could its alleged rights be ultimately protected. However, the complaint and the answers thereto raise a large number of other difficult questions of first impression, resolution of which will necessarily take time. In view of this fact, it would clearly be improper to defer setting the matter for hearing merely because it is possible that action by the Supreme Court during the pendency of our proceeding might require dismissal of the complaint or otherwise affect our consideration of the issue.

---

[3] Trunkline Gas Company, *et al.*, Docket No. G–15394, *et al.*, Opinion No. 321, 21 FPC 704, issued May 22, 1959.

(2) The related arguments that the complaint must be dismissed because Superior has in American-Louisiana a willing and able pipeline purchaser for its Block 14 gas and that the entire complaint in reality is merely an attempt to secure a higher price for its gas than the Commission was willing to grant it in the proceeding in which it certificated Superior's sale to American-Louisiana, are also without validity. American-Louisiana is not and has never been an existing pipeline having rights-of-way "in the vicinity" of Superior's leases in Block 14 granted by the Secretary of Interior through the submerged lands of the Outer Continental Shelf under Section 5 of the OCSLA. Superior's proposal in its application to sell a specified amount of gas to American-Louisiana contemplated that Superior would build a 28 mile line to get the gas from its off-shore platform into American-Louisiana's pipeline facilities on-shore.

Speculations as to Superior's ultimate motives in bringing the complaint cannot form the basis for dismissal. Even if the price at which it might be eventually authorized to sell gas to Trunkline was no higher than that at which the Commission authorized it to sell gas on-shore to American-Louisiana (and no larger amounts were involved), Superior would obviously be better off if it had a right to make the sale to Trunkline at or near the terminus of Trunkline's existing pipeline running to Block 14. In any event, the argument reflects a misconception as to the relationship of our responsibilities under Section 5 of the OCSLA and Section 7 of the Natural Gas Act.

The two statutes, it is clear, can and should be read so that they will be complementary to one another. Any obligation that a pipeline might have under Section 5 of the OCSLA is, we believe, limited to an obligation to contract with a producer to purchase or transport proportionate amounts of gas on nondiscriminatory terms (and to file and prosecute certificate applications with the Commission under the Natural Gas Act to effectuate such contracts); such contracts necessarily remain fully subject to modification or rejection by the Commission if, in the subsequent exercise of its authority under Section 7 of the Natural Gas Act, it is not able to conclude that the application to effectuate the contract is required by present or future public convenience or necessity. Thus, a pipeline which has contracted with a producer to purchase off-shore gas at 20¢ might be under an obligation under Section 5 of the OCSLA to contract to purchase proportionate amounts of gas from another off-shore producer at 20¢, but this would not compel the Commission to certificate the sale at the price if it were not required by public convenience and necessity—even assuming it had certificated the original sale at such price. At the same time, the likelihood or even the certainty that the Commission under established policies would not certificate a sale at an initial price of more than the 18.5¢ previously found to be appropriate for new sales in the area, would not necessarily mean that 18.5¢ would be the non-discriminatory rate to which the producer would be entitled to have the pipeline contract to pay under Section 5 of the OCSLA. In sum, the price determinations to be made under the two statutes are independent of one another and based on different standards.

(3) Several of the respondents argue that Trunkline has no right-of-way over Superior's leases, but only across submerged lands leased to Union and Pan American, and that Trunkline's obligations under Section 5(c) are limited to the transportation or purchase of natural gas produced from the lands over which it has rights-of-way. The answer to this contention is that the controlling geographical test of a pipeline's potential obligation under Section 5(c) of the OCSLA is whether its lands are located "in the vicinity" of the complainant's acreage, not whether it traverses it. Without finally resolving this issue, it is clear from the pleadings that Trunkline may reasonably be held to be "in the vicinity" of Superior's leases for the purpose of determining whether to hear Superior's complaint.

(4) Collateral to this argument is the contention that Transco has been granted a right-of-way for a pipeline that directly traverses the Superior leases in Block 14 and that it is to this allegedly closer pipeline rather than to Trunkline that Superior must look for any determination under Section 5 of the OCSLA. It can be argued that where two pipelines have rights-of-way across the submerged lands of the Outer Continental Shelf both of which are "in the vicinity" of a producer's leases, the producer has a right to seek relief under the OCSLA against either pipeline, regardless of which is closer to its leases. Regardless of the merits of any such argument we see no basis for concluding that a producer in such a situation must seek relief from the pipeline which is nearer to its lease where (as in the case with Transco) the nearer pipeline is not making any purchases "in the vicinity" and has no facilities to do so, and another nearby pipeline (as does Trunkline) is taking gas from two producers with adjoining leases in the same block, which are allegedly part of the same geological formation.

(5) Several of the respondents contend that the failure of Superior to contest or object to the original certificates issued to Pan American and Union in 1959 to sell gas to Trunkline from their Block 14 leases here in issue plus the similar failure to intervene in the recent proceeding with authorized additional sales from the deeper horizons, constitutes laches. However, the question of laches is always a factual one which except in the most unusual circumstances, not presented here, does not lend itself to a motion to dismiss. Moreover, it is clear that if the laches doctrine applies at all, it relates not to what Superior should have done with respect to the Pan American or Union certificate orders, but whether it has unduly delayed in bringing the present complaint to the prejudice of the respondents.

(6) The contention that Superior's complaint constitutes an impermissible collateral attack upon the certificates heretofore issued by the Commission to Pan American and Union is not a valid basis for dismissal. There is nothing before the Commission at present indicating that if Trunkline were to be found to be under an obligation to purchase proportionate amounts of gas from Superior, it could not do so without cutting back on the minimum amounts of gas it contracted to take from Pan American and Union in the certificated sales. Assuming, however, that this might prove to be the case, we do not believe it would necessarily bar relief to Superior under the OCSLA.

(7) In a related argument respondents contend that in order to meet Superior's claims Trunkline might have to extend or enlarge its pipeline facilities extending to Block 14, and the Commission has no authority under the Natural Gas Act to order such extensions or enlargements. On the face of the pleadings there is no reason to assume that Trunkline as a result of such an order, will, as a practical matter, be obliged to extend or enlarge its existing facilities. In any event we are not persuaded that Superior's complaint under the OCSLA should

be dismissed because the Commission lacks the power to order extensions or enlargements under the Natural Gas Act.

Finally, we turn to the question of Superior's application for subpoenas and depositions. Subsequent to the filing of the complaint, Superior applied for subpoenas duces tecum and an order authorizing the taking of depositions addressed to Union Oil Company and Pan American. Superior requests that documentary evidence be produced by Pan American and Union showing *inter alia* copies of all well logs, analysis of core samples, directional well surveys, pressure tests and geological structure maps relating to wells drilled in Blocks 14, 15, 26 and 27 and 35 offshore Vermilion Area, Louisiana. Superior alleges that the data and information sought is relevant and material to this proceeding, since the primary issue herein is the determination of the proportionate share of the natural gas which Trunkline transports or purchases from the Block 14 Field to which Superior is "reasonably entitled" under Section 5(c) of the Outer Continental Shelf Lands Act. Superior maintains that resolution of this issue will involve among other things, determination of the productive limits of the field and each horizon therein; the total gas reserves of each separate horizon, initially, and remaining; and the depth, areal extent and interconnection of such formations.

Superior also applies for an order of the Commission for the taking of oral depositions of the respective Presidents of Trunkline, Union and Pan American, for the purpose of identifying the documentary evidence sought from these defendants by the above subpoenas.

Each of the defendants has filed an answer to Superior's application for subpoenas and depositions. Union indicates that if Superior were permitted to "launch" such an "ill-conceived discovery program", the other parties would be required to protect themselves by filing equally broad and complex applications for the issuance of subpoenas against Superior's executives. Trunkline submits that Superior is not entitled to examine the data which it seeks, and that, in any event, requests for subpoenas are premature at this stage, since the Commission now has before it motions to dismiss, which, if granted will obviate the necessity to deal with the application for depositions. Furthermore, Trunkline indicates that until the issues have been delineated, fundamental questions of relevancy and materiality cannot be passed upon. In addition, Trunkline states that all of the material sought by Superior is regarded as highly confidential by each company possessing such data. Pan American in its opposition to the application for subpoenas states that Superior fails to show that there is any immediate need for these specific data for preparation of exhibits by Superior or for any other evidence Superior states it proposes or intends to offer at hearing. Pan American further indicates that Superior has failed to specify its intended use of such data with particularity, and has failed to establish the requisite foundation of relevance and materiality.

We do not doubt that there may be circumstances under which the type of information sought by Superior would be relevant to a Section 5(c) determination and, to the extent that it is solely within the knowledge or possession of the respondents, would properly be the subject of subpoenas or other discovery procedures. It is clear that, if Superior is otherwise entitled to relief, it cannot show what would be its proportionate amount of gas and may not be able to show further material but contested facts unless it has access to the otherwise confidential files of the respondents. We do not think, however, that it is either necessary or appropriate for us to pass upon the specific applications for subpoenas and depositions at this time; while the normally confidential nature of these important business documents and information would not make them immune from proper disclosure when necessary, we should not lend ourselves to the unrestricted examination of such material by competitors unless it is clearly necessary to the proof of a party's case. There could well be developments in the course of the hearing which would moot Superior's need for some or all of this information. Thus, it is by no means impossible that the parties could stipulate as to the reserves underlying their respective leases and the geological relationship of the various horizons.

Accordingly, we shall deny Superior's request for subpoenas and depositions without prejudice to their resubmission to the hearing examiner at an appropriate stage of the hearing we are now ordering. Prior to such submission, we shall expect the parties to explore among themselves and with the hearing examiner if necessary the question as to whether appropriate factual stipulations cannot be arrived at which will obviate the need for recourse to subpoenas or depositions by any of the parties.

The Commission orders:

(A) The motions to dismiss the complaint of Superior under Section 5(c) of the OCSLA should be and hereby are denied.

(B) The application for subpoenas and the request for an order to take depositions by Superior are hereby denied, subject to renewal before the hearing examiner.

(C) Superior's request that its complaint be taken as an application pursuant to Section 7 of the Natural Gas Act for authority to sell natural gas to Trunkline is hereby denied.

(D) A hearing of Superior's complaint under Section 5(c) of the OCSLA against the named respondents shall commence on March 2, 1965, 10 A.M., at a Hearing Room of the Federal Power Commission, at which time all parties named in the aforesaid complaint shall appear before a hearing examiner to be designated by the Chief Examiner of the Federal Power Commission for the purpose of (1) a pretrial hearing, (2) the clarification of issues, (3) determination of the order of presentation of evidence, (4) the determination of the relevance of any application for subpoenas and depositions to the issues of this proceeding, and setting a date for further hearing and presentation of evidence.

(E) Petitions to intervene shall be filed within 20 days from date of issuance of this order.

OPINION NO. 448

HOPE NATURAL GAS COMPANY, DOCKET NO. CP63-272

OPINION AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND DENYING REQUEST FOR ORAL ARGUMENT

(Issued February 2, 1965)*

Syllabus

1. Commission *concludes* certificate should issue authorizing merger of affiliated companies and allowing proposed accounting procedure as an interim measure, subject to specified conditions. P. 154.
2. Benefits claimed from merger are numerous and desirable—contrary to Cities' claim, evidence shows that all anticipated savings and other economies could not be accomplished in absence of complete merger. PP. 154, 155.

---

*Initial decision appears on P. 159. Rehearing denied by order issued March 22, 1965, 33 FPC. 590. Affirmed, *sub nom. Canton, Cleveland and Massilon, Ohio.* v. *F.P.C.*, 360 F. 2d 521 (CADC–1966).

3. Rejecting contention of Cities, Commission finds no evidence to support or reason to believe that rate increase would result from merger. P. 155.

4. Where no rate change will be occasioned by authorization of merger, question of propriety of existing rates which will not be adversely affected thereby, is not relevant to Section 7 determination. P. 155.

5. Permissive language of Section 4 does not require applicant to file storage accounting proposal as rate change since change necessitating revised accounting is to be change in circumstance, *i.e.* corporate merger and no "change in rate" will actually be effected. P. 155.

6. Approval of accounting procedure limited to period of three years following initiation of operations by merged company. P. 156.

7. Authorization of merger conditioned with respect to: (1) Moratorium on rate increase; (2) cost of service in future rate proceedings; (3) accounting procedures; and (4) treatment to be accorded storage costs in any future rate proceeding. P. 156.

8. Commission *issues* certificate authorizing merger of affiliated companies, in proceeding arising under Section 7 of the Natural Gas Act.

Norman A. Flaningam, Thomas A. White, C. William Cooper and *Thomas F. Brosnan* for Hope Natural Gas Company.

Lauman Martin, James O'Malley, Jr. and *Eugene B. Thomas, Jr.* for Niagara Mohawk Power Corporation.

Keith M. Pyburn, Jack D. Head, and *Bolivar Andrews* for Texas Eastern Transmission Corporation.

Louis R. Reif for Iroquois Gas Corporation.

W. K. Scott, Jr. for Empire Gas and Fuel Company, Iroquois Gas Corporation, Pennsylvania Gas Company, United Natural Gas Company.

Richard N. George, Calvin S. Kellogg, and *Francis E. Drake, Jr.* for Rochester Gas and Electric Corporation.

Franklin B. Gilmore, George Failey, F. J. Walsh, and *Norman O. Besheer* for North Penn Gas Company.

Frederic H. Lawrence and *L. W. Hasbrouck* for New York State Electric & Gas Corporation.

Thomas M. Rutter for the County of Allegheny, Pennsylvania.

Robert L. Stewart for Public Service Commission of West Virginia.

Richard G. Reichel for City of Massillon, Ohio.

James L. Harkins, Jr. and *Bronis J. Klementowicz* for City of Cleveland, Ohio.

Charles R. Brown for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

O'CONNOR, *Commissioner:*

This proceeding involves a proposal for a corporate merger without intended change in rates or services. By application filed April 5, 1963, and later supplemented on May 1, 1963 and June 12, 1964, Hope Natural Gas Company (Hope or applicant), a West Virginia corporation having its principal office in Clarksburg, West Virginia, seeks a certificate of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act authorizing it to acquire by merger and to operate all the natural gas facilities of its affiliate, New York State Natural Gas Corporation (New York Natural), a New York corporation with its principal office in Pittsburgh, Pennsylvania. Hope proposes to acquire all the assets and liabilities of New York Natural and will perform all acts, make all sales and render all services now being performed by and required of New York Natural under outstanding certificates issued by the Commission. Upon consummation of the merger and the securance of all necessary regulatory approvals the surviving corporation, with its name changed to Consolidated Gas Supply Corporation and having its principal place of business in Clarksburg, will make all sales and will render all services presently being performed by the two corporations, with one exception to be hereinafter discussed. New York Natural, having been divested of all legal rights and responsibilities, presumably will be dissolved; at least it will no longer be a "natural-gas company" as defined in the Natural Gas Act. The sales contracts and tariffs of Hope and New York Natural will be adopted by the surviving corporation, which will carry out the obligations of both companies under their respective rate filings and settlement agreements.[1] The intrastate operations now conducted by Hope in West Virginia will be carried on by the merged company in the same manner as at present but under the name of Hope Natural Gas Company, a Division of Consolidated Gas Supply Corporation.

Hope and New York Natural are two of six[2] wholly-owned operating subsidiaries of Consolidated Natural Gas Company, a registered public utility holding company, comprising an integrated natural gas system and engaging in all phases of the natural gas business. The companies are similar in many respects. Each produces and purchases natural gas, each makes purchases of substantial quantities of natural gas from the south and southwest, each maintains extensive underground gas storage pools and each owns and operates a gas transmission system and makes interstate sales, in part to common customers within the Consolidated System and in part to non-affiliated wholesale customers. As stated in the initial decision, the real difference in the systems is one of geography; Hope operates in Virginia and West Virginia while New York Natural operates in Pennsylvania and New York. The systems are interconnected at the West Virginia-Pennsylvania border.

Applicant justifies its request on the grounds that the simplified corporate structure will eliminate a substantial duplication of personnel, reduce regulatory expenses, work improvements through the unification of various technical divisions, and will provide for more efficient procurement and operational procedures. Although a nonrecurring expense of $941,887 will be incurred in connection with the merger, applicant estimates that an annual reduction of approximately $1,600,000 in the cost-of-service will be achieved by the third year of operation of the combined companies. The greatest single item of saving would result from a reduction of 175 in the number of employees required to operate the merged company. The annual payroll costs attributed to these positions is $1,720,796. Although a total of 118 vacancies existed on the personnel rolls of Hope and New York Natural as of July 31, 1964 (75 Hope and 43 New York Natural), all but 30 of the vacant regular positions were being filled by temporary employees. The unfilled vacancies were entirely within the New York Natural organization. Applicant testified that New York Natural would be unable to continue to operate on such basis for any sustained period of time without significantly impairing its operating position. Applicant's plans, described by the examiner, ameliorate to the greatest possible degree the effects on the incumbents of the reduction in force and seek to assure that few if any employees, or their families, would be adversely affected by the merger.

---

[1] As approved in *New York State Natural Gas Corporation*, Docket No. RP64-40, 32 FPC 198, issued July 17, 1964; *Hope Natural Gas Company*, Docket No. G-5474, *et al.*, 28 FPC 958.

[2] The others are The East Ohio Gas Company, The Peoples Natural Gas Company, The River Gas Company and the Lake Shore Pipe Line Company. A non-operating company, Con-Gas Service Corporation, provides certain services to the affiliated companies.

An additional decrease in the cost-of-service would be realized in the elimination of an office rental expense now incurred by New York Natural. Both this and the anticipated payroll savings would be offset to an extent by the costs involved in setting up new offices and other plant facilities. Nevertheless the evidence establishes that a very real annual saving in excess of $1.5 million may justifiably be expected from the merger.

The application is supported by Texas Eastern Transmission Corporation, a major supplier of both applicant and New York Natural and which intervened in the proceeding, and by the Commission's staff. The proposal has been opposed by the three Ohio cities of Cleveland, Canton and Massillon (Cities) which argue that the merger is unnecessary to achieve the desired cost savings and that a rate question is involved.[3] The Cities' interest in the proceeding derives from the fact that each is served exclusively by The East Ohio Gas Company, also an affiliate of the Consolidated System,[4] and that Hope and New York Natural are major suppliers to East Ohio.[5] Their contention, in essence, is that the merger should not be approved in the absence of a thorough inquiry into possible future changes in cost allocation and rate design of the merged corporation, that the examiner improperly excluded questions regarding the effect of the merger upon rates, and that approval of the merger as proposed will effect a present rate change and will almost inevitably give rise to future rate changes of unknown dimensions. Thus, they argue, the fact that a relatively "minimal" cost reduction of $1,600,000 per year may or will be achieved by the merger should not be dispositive when to permit the merger could lead to changes involving substantially greater amounts.

Notwithstanding any future plans applicant may have for changes in rates and rate design of the combined companies, none being involved in the instant proposal, one problem is presented in the plan to continue all the present sales of applicant and New York Natural at the same rates. Unlike the other rate schedules of the two companies which carry fixed prices, New York Natural's OSS Rate Schedule as contained in Volume 2 of its FPC Gas Tariff embodies a cost-of-service formula under which the charges include, as a major element, the cost of gas withdrawn from storage.[6] Approximately 12 percent of New York Natural's gas supply is purchased from Hope. With the merger, this sale naturally would cease, the two companies being one; the physical flow of gas into the former New York Natural storage pools will, however, remain wholly without change. The problem is how to continue to reflect in the OSS cost-of-service form rate schedule the cost element comprising the per Mcf price now paid by New York Natural to Hope. Sales under the OSS schedule are made to East Ohio, supplying the Cities, and to Peoples Natural Gas Company. Without the utilization of some formula designed to record a gas purchase cost equal to the price now paid Hope by New York Natural, the storage input rate charged the former New York Natural pools would not reflect all the dollar effect of the costs presently included and, as a result, the charges under the OSS rate schedule would drop significantly without any corresponding reduction in the costs to the combined companies.

---

[3] Although a number of other customer-distributors of Hope and New York Natural were granted intervention, they did not request a formal hearing on the application and were willing to have the certificate granted in a summary proceeding.

[4] Note 2, *supra*.

[5] In 1963 East Ohio purchases from Hope and New York Natural represented 40 percent of its total system requirements and 69 percent and 14 percent, respectively, of the total jurisdictional pipeline sales of these supplier companies. Over 30 percent of East Ohio's sales were made within the Cities.

[6] Natural has organized its properties into two systems—one its OSS System and the other its General System. The OSS System comprises the Oakford and South Bend storage pools near Pittsburgh and their appurtenant facilities. The remainder of Natural's properties, serving 16 nonaffiliated distributors in Pennsylvania and New York, is called its General System. The General System services the OSS System under certain conditions, not here material, but the latter provides no reciprocal service to the General System.

It was to meet this situation that applicant has proposed the following two-part procedure: (1) Consolidated Gas Supply would continue to separately price the gas stored in the former Hope and New York Natural storage pools in the same manner as presently performed, except that (2) in calculating the weighted average cost of gas acquired for the continuance of the former New York Natural operations and actually injected into those storage pools, there would be substituted for Hope's present supply to New York Natural the cost of gas now purchased by Hope in Louisiana. In other words the gas purchase costs incurred by the surviving corporation in taking over Hope's purchase obligations in Louisiana would be charged to the former New York Natural pools instead of the former Hope pools. The proposed storage accounting was tested against actual operations in 1963, the last full calendar year for which figures were available, and was projected against the estimated operations in 1965, assuming the latter to be the first year of operations of merged company. The results showed that the total effect of the proposed accounting procedure would be to decrease the charges to East Ohio and Peoples by $3,000 to $4,000 per annum, or a change of only $\frac{2}{100}$ of one percent when compared to annual billings for gas under the OSS schedule exceeding $13,000,000 per year.

The examiner, in a decision issued November 18, 1964, has recommended that the merger be approved as coming well within the public convenience and necessity standard of Section 7 of the Act. He concluded, however, that it would be necessary for Consolidated Gas Supply to file the proposed accounting method as a rate change under Section 4 and has conditioned his decision permitting the merger upon such a filing. The Cities, in excepting to the decision, continue to insist that the merger is an unnecessary means to achieve the desirable end of a cost reduction and therefore should not be permitted, particularly as the applicant "has refused to reveal the impact the merger would have on its customers." They also contend that, if the merger is approved, applicant should be required to flow-through the benefits of any cost savings to its customers, including any that result from the reduction in the federal income tax rate which recently became effective, and that the proposed accounting procedure should be rejected for not having been filed under Section 4. Finally, they contend that the examiner's decision in requiring a Section 4 filing illegally "orders" the applicant to file for a rate increase.

On consideration of the record it is our conclusion that a certificate should be issued to Hope allowing the merger to be effected and that the accounting procedure proposed by applicant may be allowed as an interim measure, subject to certain conditions as hereinafter specified.

By this application the parent Consolidated System appears to be embarking upon the same sort of corporate realignment initiated some years ago by the Columbia Gas System, Inc., and approved by the Commission in various of its facets. See *The Manufacturers Light and Heat Company*, Docket No. CP61-60, 26 FPC 537 (1961) and dockets cited; *The Ohio Fuel Gas Company*, Docket No. CP62-153, 29 FPC 1134 (1963); and *United Fuel Gas Company, et al.*, Opinion No. 377, 29 FPC 90 (1963). While the ultimate aims of the two systems may not be identical in all respects, both have among their objectives a simplification program designed to produce a corporate structure consisting of the minimum number of companies required to carry on the System's business with the greatest efficiency and in the most economical manner. The benefits claimed from the merger are numerous and desirable. Not only will significant immediate cost savings be achieved, but various duplications of functions and complex intercompany transactions will be eliminated, regulatory expenses will be reduced and, all in all, the surviving corporation will be better able to perform the business of supplying natural gas to distributing companies and gas consumers at the lowest reasonable rate. The evidence shows, contrary to the Cities' claim, that all of the anticipated savings and other economies could not be accomplished in the absence of a complete merger of the two companies. Although the record does not fix a precise dollar amount on all the various operational economies, it does indicate that savings in costs beyond those detailed will result, which will ultimately benefit the consuming public.[7]

In our opinion the examiner properly resisted the effort by the Cities to inject major cost allocation and rate design considerations into the case. The Cities were granted ample opportunity to show that a rate increase would result from the merger. No evidence to this effect was presented in the record and, based upon the facts as developed, we have no reason to believe that the merger could have such an effect. Apart from the earlier described substitution in charges under the OSS schedule, which in itself will occasion a minor decrease in charges to East Ohio, the only effect properly attributable to the merger is the anticipated $1,600,000 reduction in the cost of service. Where no rate change will be occasioned by the issuance of a certificate authorizing the merger, a question of the propriety of existing rates which will not be adversely affected by the merger, such as the allegedly excessive contract demand charged by Hope to East Ohio, is not relevant to a determination under Section 7. This and other similar matters will be considered when properly raised, as in the case of a future filing of new rates by the surviving company or in a Section 5(a) proceeding initiated by the Commission either on its own motion or on an adequately supported complaint.[8] Since there is no basis for concluding that any jurisdictional customer of Hope or New York Natural, including East Ohio, will be adversely affected by the allowance of the merger, there is no reason why the certificate should not be granted.

We do not agree with the examiner that applicant must file its storage accounting proposal as a rate change under Section 4. The change giving rise to the necessity for the revised accounting procedure is to be a change in circumstance, namely, the corporate merger, and no "change in rate" actually will be effected. Instead, the procedure will simply maintain the existing level of rates to the greatest possible degree. Moreover, the procedure will be employed only on an interim basis. Under these circumstances, the permissive language of Section 4 does not necessitate the examiner's filing requirement.

However, we do not give unconditional sanction to the costing procedure. Our determination to allow the procedure to be used is strongly influenced by the showing that only a negligible difference in charges will result during 1965. Whether this will hold true in subsequent years cannot now be determined.

---

[7] As stated in the *Ohio Fuel* case (29 FPC 1134, 1140): "The program of corporate realignment, of which the present application is a step therein, will result in a more simple and economical operation, particularly as to corporate accounting, management, and regulatory matters, all to the benefit of the ultimate consumer. The simplification of the regulatory process is in and of itself sufficient justification for the realignment."

[8] *Accord, Pacific Northwest Pipeline Corp.*, 23 FPC 350, 351 (1960), *aff'd sub nom, California* v. *F.P.C.*, 296 F. 2d 348, 352 (1961), *rev'd on other grounds*, 369 U.S. 482 (1962); *The Ohio Fuel Gas Co.*, 29 FPC 1134, 1136 (1963). See also, *City of Cleveland, Ohio* v. *Hope Natural Gas Co.* and *New York State Natural Gas Corp.*, Docket Nos. RP64-3 and RP64-14, Orders Dismissing Complaints issued July 17, 1964, 32 FPC 156, 157.

Accordingly, we shall limit our approval of the accounting procedure to a period of 3 years following the initiation of operations by the merged company. Following the submission of the actual operating figures for 1965, we will scrutinize carefully the rate structure and charges of the merged company. Further, and in keeping both with the *ad hoc* nature of the procedure and its interim status, we conclude that the following additional limitations are required in the public interest as conditions to the issuance of the certificate herein: (1) a moratorium on all future rate increase filings by the merged company so as not to be effective after suspension prior to January 1, 1967, except as necessary to reflect increases in excess of $250,000 in purchased gas costs, any such increase to be offset by any rate reduction required to be made effective at or about the same time pursuant to any obligations remaining in Docket No. G-5474, *et al.*, and RP64-40; (2) the cost-of-service filed by the surviving corporation with the Commission in any future rate proceeding shall reflect the annual savings in costs realized from the merger; (3) the maintenance of suitable accounts and subaccounts to enable the isolation of costs chargeable to the former OSS System of New York Natural and to ascertain costs by zones and geographical areas in the same manner as is presently the case for each of the two companies, such data to be available for application in any future ratemaking proceeding; and (4) that the accounting for storage method as herein allowed shall be without prejudice to applicant or this Commission as to the treatment to be accorded storage costs in any future rate proceeding involving the merged corporation. These conditions, with the moratorium extended by one-half year, are in accord with a stipulation proposed by applicant on September 25, 1964. As so conditioned it is our opinion that the certificate for which application is made should be issued.

Applicant has indicated its desire to have the merger take place as soon as possible. The merger has been approved by the Public Service Commission of the State of West Virginia and has been favorably ruled upon by the Internal Revenue Service. Approval by the Securities and Exchange Commission will be sought following the Commission's authorization. The certificate herein issued will be conditioned thereon.

In their exceptions to the initial decision, the Cities request an opportunity to present oral argument before the Commission. We conclude that no useful purpose would be served by such argument and that the request should be denied. The exceptions not discussed herein are disposed of by the examiner's discussion or are immaterial to the result in this case. Except to the extent granted herein, all exceptions filed are without substantial support or reasonable basis in law and should be denied. The examiner's decision should be modified in accordance with this opinion and as so modified should, with this opinion, constitute the decision of the Commission.

The Commission further finds:

(1) Hope Natural Gas Company, a West Virginia corporation with its principal place of business in Clarksburg, West Virginia (which is to be renamed Consolidated Gas Supply Corporation), is a "natural-gas company" within the meaning of the Natural Gas Act.

(2) New York State Natural Gas Corporation, a New York corporation with its principal place of business in Pittsburgh, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act.

(3) The facilities of New York State Natural Gas Corporation, as more fully described in the application and the evidence herein, are proposed to be acquired by merger and operated by Hope for the transportation and sale of natural gas

in interstate commerce, subject to the jurisdiction of the Commission, and the acquisition and operation of these facilities are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The sales of natural gas made from and other services rendered by the facilities to be acquired from New York Natural will be in interstate commerce, subject to the jurisdiction of the Commission, and are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) Subject to the requirements of this order and the conditions of the certificate issued hereunder, Hope is able and willing properly to do the acts and perform the services proposed and to conform to the provisions of the Natural Gas Act, and to the requirements, rules and regulations of the Commission thereunder.

(6) The acquisition and continued operation of the facilities proposed to be acquired by Hope from New York Natural, and the sales of natural gas and other services proposed, are subject to the jurisdiction of the Commission and are required by the public convenience and necessity, and a certificate therefor should issue as hereinafter ordered and conditioned.

(7) The conditions attached to the certificate herein issued are required by the public convenience and necessity.

(8) Except as herein granted, the exceptions to the examiner's decision should be denied.

The Commission orders:

(A) A certificate of public convenience and necessity is hereby issued, upon the terms and conditions of this order and subject to all provisions of the Natural Gas Act and the Commission's Regulations thereunder, authorizing Hope Natural Gas Company to acquire and operate, under the name of Consolidated Gas Supply Corporation, all of the natural gas facilities of New York State Natural Gas Corporation subject to the jurisdiction of the Commission, as more fully described in Hope's application in Docket No. CP63-272.

(B) The name of Consolidated Gas Supply Corporation be and the same is hereby substituted, effective as of the date of consummation of the merger of New York State Natural Gas Corporation into Hope Natural Gas Company, for that of Hope and of New York Natural in all certificate and other authorizations heretofore issued pursuant to the Natural Gas Act by this Commission to the respective companies.

(C) The certificate issued by paragraph (A) above, and the amendments to the certificates effected by paragraph (B) above, and all rights granted thereunder are conditioned upon applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (d)(1), (d)(2) and (e) of Section 157.20 of the Commission's Regulations under the Natural Gas Act.

(D) Substantially concurrently with the consummation of the merger contemplated by this order, Consolidated Gas Supply Corporation shall file with the Commission, in accordance with its Regulations under the Natural Gas Act, the following:

(i) Notice of Cancellation of Hope's service agreement with New York Natural in accordance with the form set forth in Schedule 1 of Exhibit 6.

(ii) Certificate of Adoption of New York Natural's FPC Gas Tariff, Third Revised Volume No. 1. together with service agreements thereunder currently in effect, and its FPC Gas Tariff, Original Volume No. 2, together with the contracts embodied therein as special rate schedules, in accordance with the form set forth in Schedule 2 of Exhibit 6.

(iii) Notice of Change of Name pertaining to Hope's FPC Gas Tariff, First Revised Volumes Nos. 1 and 2, and its related service agreements and contracts on file with the Commission, in accordance with the form set forth in Schedule 3 of Exhibit 6.

(E) Within 90 days following the filings referred to in paragraph (D) above, Consolidated Gas Supply Corporation shall file with the Commission a tariff with the sheets bearing the correct name of that company to replace the tariff of Hope continued in effect and the tariff of New York Natural previously adopted. This tariff will take the form of three volumes, as follows:

(i) *Original Volume No. 1*—will embody the rate schedules now contained in First Revised Volume No. 1 of Hope's FPC Gas Tariff and Third Revised Volume No. 1 of New York Natural's FPC Gas Tariff with appropriate company name and other formal changes, including redesignations of the rate schedules to reflect the continuation of Hope's rate zones 1 and 2 with the same designations and the continuation of New York Natural's rate zones 1 through 4 redesignated as zones 3 through 6.

(ii) *Original Volume No. 2*—will embody the special rate schedules now contained in Original Volume No. 2 of New York Natural's FPC Gas Tariff with the appropriate company name and other formal changes.

(iii) *Original Volume No. 3*—will embody the special rate schedules now included in Original Volume No. 2 of Hope's FPC Gas Tariff with appropriate company name and other formal changes.

(F) The storage accounting procedure proposed to be followed after the merger, as more fully described in the application and in the evidence herein, be and the same is hereby approved, effective from and after the merger of New York Natural into Hope, subject to the following conditions:

(i) Approval of the accounting procedure is limited to a period of three years following the initiation of operations by the merged company.

(ii) Consolidated Gas Supply Corporation shall not submit any rate increase filing to the Commission to be effective after suspension prior to January 1, 1967, except as necessary to reflect increases in excess of $250,000 in purchased gas costs, any such increase to be offset by any rate reduction required to be made effective at or about the same time pursuant to any obligations remaining in Docket No. G-5474, *et al.*, and RP64-40.

(iii) Any cost-of-service filed by the surviving corporation in any future rate proceeding shall reflect the annual savings in costs realized from the merger.

(iv) Consolidated Gas Supply Corporation shall maintain suitable accounts and subaccounts to enable the isolation of costs chargeable to the former OSS System of New York Natural and to ascertain costs by zones and geographical areas in the same manner as is presently the case for each of the two companies, such data to be available for application in any future ratemaking proceeding.

(v) Approval of the accounting method is without prejudice to Consolidated Gas Supply Corporation or the Commission as to the treatment to be accorded storage costs in any future rate proceeding involving the merged company.

(G) The effectiveness of the certificates issued and amended by paragraphs (A) and (B) above is conditioned upon the applicant's first obtaining the necessary approval from the Securities and Exchange Commission.

(H) The certificate issued in paragraph (A) above shall be accepted in writing and under oath by the applicant within 30 days of the date of issuance of this order; upon consummation of the merger applicant shall, within 10 days thereof, report such fact to the Commission, together with the effective date thereof.

(I) The certificates herein issued and amended are not transferable and shall be effective only so long as the applicant continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(J) The motion for opportunity to present oral argument before the Commission is denied.

(K) Except as herein granted, the exceptions to the examiner's decision are hereby denied.

(L) The examiner's decision, to the extent not inconsistent herewith, is hereby adopted as part of this opinion and order.

INITIAL DECISION

OF THE PRESIDING EXAMINER ON THE CERTIFICATE APPLICATION OF THE HOPE NATURAL GAS COMPANY

(Issued November 18, 1964)

TABLE OF CONTENTS

		Page
I.	Nature of the case	159
II.	Procedural background	159
III.	Hope and New York Natural to merge	160
IV.	Benefits claimed from the merger	162
V.	The Cities' opposition to the merger	163
VI.	The New York Natural storage sales rate	166
VII.	Findings and order	168

I

NATURE OF THE CASE

Ellis, *Presiding Examiner:* As a step in the merger of two of the subsidiaries of the Consolidated Natural Gas System, one of the subsidiaries, the Hope Natural Gas Company, has asked for a certificate permitting it to acquire and operate the natural gas lines and facilities of the other, the New York State Natural Gas Corporation. When the merger is completed Hope will be given a new name, the "Consolidated Gas Supply Corporation",[1] and all operations of the two present companies will continue under that name, without change in program or rates. All of the customer distributors served by the two natural gas companies appear to support the merger or at least not to oppose it, but in Ohio, where another affiliate distributes a large share of the gas of both companies, the cities of Cleveland, Canton and Massillon have joined in opposition. The issues raised relate to whether the economies and other benefits will really ensue, whether they could not be achieved by other means, whether certain harm will result, and whether there is not a latent rate question which demands fuller treatment.

II

PROCEDURAL BACKGROUND

April 5, 1963: Application filed under Section 7(c) of the Natural Gas Act for a certificate authorizing Hope to acquire and operate the gas facilities of the New York State Natural Gas Corporation and to continue its sales in interstate commerce.

---

[1] Hence, herein, the surviving company is referred to as "Hope—Consolidated Gas".

May 1, 1963: Supplement filed to application, including a ruling from the Internal Revenue Service to the effect that no tax gain or loss will result from the merger.

June 12, 1964: Second supplement to application filed, including a favorable ruling from the Public Service Commission of West Virginia.

July 17, 1964: Public notice of application issued by FPC.[2]

September 24, 1964: Prehearing conference held, at which opposition was expressed by the cities of Cleveland, Massillon, and Canton, Ohio.

October 6, 1964: Public hearing begun and concluded. The Cities moved to dismiss the application.

October 22, 1964: Briefs filed by the FPC Staff and by the Ohio cities.

November 2, 1964: Reply briefs filed by the applicant and by one intervenor, the Texas Eastern Transmission Corporation.

The record is comparatively brief, consisting of 10 exhibits (which include the testimony prepared in advance), 388 pages of transcript and a few items incorporated by reference.

III

HOPE AND NEW YORK NATURAL TO MERGE

Both Hope and New York Natural are subsidiaries of the Consolidated Natural Gas Company, which is a registered public utility holding company serving a great part of the area of West Virginia, Ohio, Pennsylvania and New York. Consolidated is a house of many mansions, its other subsidiaries including the East Ohio Gas Company, which distributes through much of northeastern Ohio, the Peoples Natural Gas Company (distributing in the west Pennsylvania area), the River Gas Company, the Lake Shore Pipe Line Company and the Con-Gas Service Corporation.

Both Hope and New York Natural are very substantial concerns, each with revenues in the neighborhood of $100,000,000 per year, and they comprise a large segment of the Consolidated System, which is one of the major utilities subject to the jurisdiction of the Federal Power Commission and also—with respect to its holding company aspects—subject to the Securities and Exchange Commission.

Hope, while operating mostly in West Virginia, is a completely integrated natural gas company in that it produces natural gas; buys local production in the Appalachian area, transports natural gas in interstate commerce, purchases substantial supplies of gas in south Louisiana for transportation by others to its area, stores natural gas, and sells gas at retail in West Virginia and at wholesale at the Ohio and Pennsylvania borders. Three-fourths of its sales are to affiliated companies, predominately the East Ohio Gas Company which serves Cleveland and much of the Ohio area. Most all of the rest of its sales are to ultimate consumers in West Virginia; these, of course, are controlled by the West Virginia Commission. Hope both produces and purchases gas in Louisiana and has it transported to its Ohio River area markets by the Texas Eastern Transmission Corporation. Its total volume of sales has increased three times over the volume sold in 1940, the test year for the landmark rate case, *F.P.C.* v. *Hope Natural Gas Company* (1944), 320 U.S. 591.

---

[2] On the same day, the Commission also issued three orders of interest here:

1. Order Dismissing Rate Complaint against Hope filed by the City of Cleveland, Ohio, on July 9, 1963 in Docket No. RP64-3, 32 FPC 156;

2. Order Dismissing Rate Complaint against New York Natural filed by the City of Cleveland, Ohio, on December 4, 1963 in Docket No. RP64-14, 32 FPC 157; and

3. Order accepting the $1,006,000 annual rate reduction by New York Natural effective June 1, 1964 in Docket No. RP64-40, 32 FPC 198.

New York Natural is the other principal supply source in the Consolidated System. Its pipeline interconnects with Hope's at the border of West Virginia and Pennsylvania, continuing northward through Pennsylvania and New York State as far as Albany.

New York Natural has significant local production sources in western Pennsylvania and New York, also makes substantial purchases from pipelines leading from the Gulf area and maintains extensive underground gas storage facilities. Four-fifths of its business is with 16 nonaffiliated utilities in Pennsylvania and New York. The remainder of its business is the operation of its storage pools and other facilities to deliver gas to its affiliates, East Ohio and Peoples Natural Gas Company, the service to these companies being on a "cost of service" type of tariff. All of New York Natural's sales are in interstate commerce for resale and thus are subject to the jurisdiction of the Federal Power Commission. The two companies concerned in the merger are identical in ownership, since both are wholly owned by the Consolidated System, and their operations are remarkably similar and in about the same volume. The real difference is only one of geography—that is, Hope operates in West Virginia and a little in Virginia while New York Natural operates in Pennsylvania and New York State. There is no question of competition between them or of effect of the merger on competition.

Coincident with the merger of New York Natural (a New York corporation) with Hope Natural (a West Virginia corporation) the name of the latter is to become Consolidated Gas Supply Corporation, hence it is referred to herein as Hope-Consolidated Gas. The method of acquisition which has been agreed upon (Exhibit 2) is to retain the capital shares of Hope-Consolidated Gas in their present form and to convert all the capital shares of New York Natural into an equal number of shares of the new company, all, of course, to be owned by the Consolidated System. Surveillance of the merger itself is not the responsibility of the Federal Power Commission under the statute;[3] rather, it is subject to review by the state commission of West Virginia (whose order of approval is in the record) and by the Securities and Exchange Commission under the Public Utility Holding Company Act. The SEC approval is expected to be applied for and received shortly and the order herewith is conditioned upon that action.

After the merger, Hope-Consolidated Gas will make all sales and render all of the services presently being performed by New York Natural and by Hope.[4] The sales contracts and tariffs of Hope and New York Natural on file here will continue in effect after the merger under the new name of the surviving corporation, and the various obligations as well as rights of both companies under the Natural Gas Act will similarly continue. It is significant that no change whatever in actual physical operations is immediately in prospect, nor is there intended any substantive change in the rates and services. In other words, business will go on quite as usual; all that is involved is the change in the corporate structure to the end that Hope-Consolidated Gas will continue to carry on its present operations and all of those of the New York Company without change, all pursuant to the present tariffs but under the name of the Consolidated Gas Supply Corporation. In essence the change is a paper one only, with no immediate effect upon gas, pipelines or consumer dollars, and this explains the relatively narrow field of inquiry and the several limitations which were placed during the hearing upon the evidence sought to be adduced.

---

[3] *California v. F.P.C.* (1962), 369 U.S. 482, 489.

[4] The intercompany sale from Hope to New York Natural will perforce be discontinued, and this will require some adjustment as discussed below in Part VI.

IV

BENEFITS CLAIMED FROM THE MERGER

Averring that its ultimate savings in operating expenses will approximate $1,600,000 per year, with opportunity for further savings, the applicant classifies the beneficial purposes of the merger as follows:

(a) To simplify the corporate structure, substituting one management for two and eliminating duplication of administrative, accounting and operating personnel, also separate reports to governmental agencies and others. This means a more efficient utilization of personnel, facilities and equipment.

(b) To reduce regulatory expense by eliminating intercompany transactions, fewer filings of certificate applications and rate changes.

(c) To work improvements through unification of several technical departments, such as geological, engineering, storage, dispatching, and data processing.

(d) To seek more efficient procedures and organization for the purchase of additional supplies of gas (meaning, as explained at the hearing (2T244), the program for purchases in the Appalachian area).

(e) To get a better balancing of production and storage operations.

The program of reorganization has been carefully examined by the FPC Staff, whose conclusion it is that, "The consummation of the proposed merger will enable the surviving corporation to achieve significant costs savings which will ultimately redound to the benefit of the gas consumers." The annual costs savings in the neighborhood of one and a half million dollars result primarily from a reduction of seven or eight percent in the number of employees, or 175 positions. Their payroll expense (and the related cost of incidental benefits and employee headquarters) are now an important share of the cost of service of the two companies. Their reduction is an economic gain to the cost of service and must in the long run have its effect on the rates charged to the distributors and by them charged to the ultimate consumers, whose interest is, after all, the lodestar of this proceeding.

The indirect benefits of the unification may be eventually as great as the more obvious ones for which figures can be adduced. For example, the application includes an exhibit listing the outstanding certificates of the two companies, 17 pages for Hope Natural and 22 pages for New York Natural. Most of these evidently would be required whether it is two companies or one, but it is plain there is some room for reduction. One such elimination is obvious—the present sale by Hope to New York Natural in the amount of $14,000,000 per year, which is under a filed tariff.

By any measure, the personnel savings from the 175 positions eliminated must be regarded as significant; the annual cost reduction resulting, $1,720,000, is eight percent of the total cost of payroll and related benefits.

This is an obvious demonstration of the public convenience and necessity which is the statutory standard for the certificate requested, since these costs are a part of the cost of service which in the long run determines the rates.

But the elimination of the 175 positions is quite the opposite of public convenience so far as the 175 incumbents are concerned. To ameliorate that problem, the company has made a number of provisions, such as an early retirement with an extra contribution from the company to make it unnecessary to discount the amount of the pension payable. For others a severance pay allowance is provided, while for the personnel who move from Pittsburgh to West Virginia, where the entire company will be located, some provision will be made for a relocation allowance to assist in their expenses.

Quite apart from the concrete proof of savings through abolition of positions, there is ample authority for the view that simplification and streamlining of the corporate organization by itself is a good thing and "in and of itself sufficient justification for the realignment", quoting from the case of *The Ohio Fuel Gas Company*, 29 FPC 1134, 1140 (1963). This is the policy of the law generally, as expressed, for example, in the Reorganization Act of 1945.[5] It is the policy of the Congress with reference to utilities, as expressed in the Public Utility Holding Company Act;[6] and, specifically, it will lead the way toward greater flexibility, efficiency and economy in the procurement of gas produced in the area, its transmission, storage and sale (Exhibit 7, page 8). All of these, together with the savings noted, are elements in the complex of "public convenience and necessity" which Section 7 of the Natural Gas Act spells out as the guide to the issue of the certificate here requested.

V.

THE CITIES' OPPOSITION TO MERGER

It is significant that the nonaffiliated distributor customers of the Consolidated System do not oppose the merger and, in fact, most of them seem to support and recommend it. The largest distributor customer of the system is the East Ohio Gas Company, serving Cleveland and other areas in the northern and eastern part of Ohio. East Ohio is an affiliated company, also fully owned by the Consolidated System, and of course was not separately represented. Instead, there intervened and appeared at the hearing solicitors for the City of Cleveland, and joining with them on the brief are the City of Canton and the City of Massillon. Representing, in effect, the ultimate consumers, they join in roundly opposing the merger in its entirety with a further special objection to the storage pricing procedure, which is set out below.

Turning first to the cost benefit claimed—that is, the million and a half dollar reduction in the annual cost of service, mostly through reduction in the number of personnel employed—the cities' attack is entirely too much on a shotgun approach, with three shots aimed in widely diverging directions, *viz.:*

(a) The savings, even if made, are inconsequential when related to the total cost of service.

(b) The savings will not really take place at all, or at least not much of them.

(c) The same savings could be accomplished in other ways, without the merger (T87).

As to (a), the fact that the savings are a very small percentage of the total costs does not make a million and more dollars a year inconsequential. It is enough, to test the claim here made, to suppose or hypothesize, for the moment, an increase in costs instead of a decrease, that is, some doubtful or controversial increase of a million dollars in the annual costs, instead of a savings. In that event, the cities would hardly be expected to be satisfied with a reply from the company to the effect that such an increase is inconsequential and should be disregarded. Anyway, while it appears to be but one percent of the combined gross income, it is perhaps more meaningful that the savings amount to 4.8 percent of the "operating expenses" of the two companies combined.[7]

---

[5] 59 Stat. 613, Section 2(a).

[6] *Phillips* v. *S.E.C.* (CADC-1950), 185 F. 2d 746, 749.

[7] Compare Item A by reference, Volume II, Exhibit L (xii), item 6(b), page S-11, with Exhibit 3, Schedule 1, line 5, column 18.

As to (b), there is simply no evidence to support the doubts originally expressed as to whether in truth the savings will ever take place at all, since they are amply demonstrated in the company's exhibits which stand unrefuted. In fact, most of the positions being abolished are already vacant (the company's application before the West Virginia Commission having been filed over a year and a half ago), or are filled by temporary employees. Anyway, while this point was made at the prehearing conference, the cities' brief now seems only to demur on this fact in evidence, not to controvert it.

As to (c), the cities reiterate that no corporate merger is necessary, for the companies could perfectly well reorganize by combining all their functional divisions, relocate the personnel, and thus achieve the same personnel savings, while still retaining the separate corporations. They point to quite a number of functions and operations which already are being performed for the entire Consolidated System by a service subsidiary organized some time ago. These functions include overall planning and research, pipeline procurement of gas supply, also dispatching and billing. This proves that corporate merger is not necessarily the only way to achieve personnel savings through combination of like functions.

But it is obvious that many separate functions remain and are duplicated in the two companies, one located at Pittsburgh and the other at Clarksburg, West Virginia. Especially this refers to the function of procurement of Appalachian-produced gas, which involves a great deal of expense of geological survey because of the changing character of the gas development in that region. The important thing here is that it is the management's conclusion that the effective way to eliminate the duplicating functions and the unnecessary personnel is to bring them together in one headquarters under one corporation and under undivided superintendence. Such a decision is a management responsibility, not a regulatory one.

The essence of the reorganization which FPC is called upon to approve is the transfer of the properties and the sales programs from the New York Company to Hope-Consolidated Gas. The Commission's test, under the statute cited, is whether the proposed program "is or will be required by the present or future public convenience and necessity." Upon the proof that merger will significantly lower the cost of service, a basic element of public convenience and necessity is made out. It is simply no answer at all to assert that perhaps, by a different reorganization, the savings might possibly or probably be accomplished without merger. The fact is that merger is the company-selected method of achieving the essential and desirable end. Unless some ulterior and malign result can be foreseen to come from the merger as planned, it is evident that FPC's responsibility is complete and accomplished upon the finding that the savings aimed at will embody the "public convenience and necessity" the law demands, and that corporate merger is a reasonable, efficacious, and rational way to accomplish those savings. No greater surveillance or control is required of the regulatory process, or should be.

In other words, the corporate merger procedure as selected by the management is adjudged to be a lawful method of achieving the result of economical operation, which the law demands in the name of public convenience and necessity; secondly, it is a method which is seen to give every promise of being effective. Accordingly, unless it can be shown to be otherwise undesirable or against the public interest, certification is called for, indeed required, of the Federal Power Commission by the Natural Gas Act.[8]

---

[8] Compare the following language of the Third Circuit on a similar question arising under the Public Utility Holding Company Act: "It will thus be seen that the Congressional purpose is to leave open to the holding companies a broad area of discretion in

Upon the question whether the merger procedure does have some undesirable or unfavorable side effect to countervail the advantage referred to, the Cities do make some effort to claim that consolidation of the corporations will lead to obscuration, confusion and uncertainty as to costs, revenues and rates. They point to the two companies' quite different rate forms and structures, and to the disparate capital structure. The effort is not at all convincing, especially since the program calls for no revision of the rates generally. Instead, Hope-Consolidated Gas will continue in force the present Hope tariffs, and will adopt in toto New York's. What is more, the company offered at the hearing—and it is regarded as stipulated and agreed to—to continue to keep separate cost accounts so that the separate rates can be individually tested, just as they were in July of this year, when the FPC issued its rate orders approving Hope's tariff and requiring a rate reduction for New York Natural (*supra*, p. 160).[9]

Beyond this, it is not at all appropriate now to speculate on possible rate changes hereafter—it is just not true what the Cities say in their brief that "Now is the time to air the rate impacts of the merger—not after it is too late, when the companies are merged." The opinions of the Commission and of the Court of Appeals in *El Paso*[10] are ample authority for keeping general rate problems out of certificate cases, at least to the extent that the particular question is untimely, is unaffected by the specific action being certificated, and is therefore irrelevant. Even without such authority, the answer is plain that the time to air rate impacts is when rate changes are filed or rate complaints received, all as provided in Sections 4 and 5 of the Natural Gas Act. This case is under Section 7, and the short answer is that no rate impact is now proposed or is to be expected.

Upon the bases stated, it is concluded that the public convenience and necessity of the proposed acquisition and sales are established by the specific savings affirmatively demonstrated, by the corporate simplification, and by the prospect of further economies through efficiency in operation, that no harm or disadvantage in other respects has been shown to be in prospect from the merger, and that, accordingly, the company's affirmative case is established and the certificate should issue. It follows that the motion to dismiss for lack of evidence, as stated by the Cities on the record, should be and is denied.

One final point. The Cities seem to feel it is required that the company announce its eventual and comprehensive plans for its total transmission and distribution functions as a requisite to the evaluation of this specific merger proposal, and they want these plans to be announced and discussed even before they have been formulated and decided upon. But the present merger makes no changes in gas operations, transmission or distribution functions, and it is

---

determining just how they are to bring their systems into compliance with the required standards.

* * * * * * *

It is obvious that in many cases the desired results may be reached in more than one way. Congress evidently intended to permit the Commission to leave to the company involved the initiative in suggesting from among the available alternative methods that one which it deems most appropriate. *Commonwealth and Southern Corporation* v. *S.E.C.* (1942), 134 F. 2d 747, 751.

[9] From the Transcript at 2T324:

The attorney for the applicants: ". . . the books are going to be kept with sufficient sub-accounts, that the costs by zones, by areas of operation of Hope and New York Natural, the former areas, and present rate zones, will be kept in such a manner, these costs can be determined."

From page 325: "PRESIDING EXAMINER: But you are planning to keep your books in such a way that you can, when required, make a cost allocation study on the same zone method that is now in use?" To this, the applicant's financial witness responded, "Yes, sir."

[10] *Pacific Northwest* (1959) 22 FPC 1091; affirmed, *California* v. *F.P.C.* (CADC–1961), 296 F. 2d 348; reversed on other grounds (1962) 369 U.S. 482.

time enough to evaluate any such changes after they have been planned and proposed, certainly not before they are even conceived.[11]

VI

THE NEW YORK NATURAL STORAGE SALES RATE

In the company's program of continuing the present sales of Hope and New York Natural at the same rates, one difficulty arises which calls for special treatment, not entirely separable from rates. The point is that one of New York Natural's tariff rates, the one for its sale out of storage to the two affiliates (East Ohio and Peoples) is of a cost of service type, rather than a straight or block-type rate. This would cause no problem except that 10 or 15 percent of New York's storage gas is now bought from its affiliate, Hope. When Hope-Consolidated takes over, the Hope-New York Natural sale obviously ceases, they now being one company.

The problem is how to continue to reflect in the New York Natural cost of service tariff the cost element comprising the price now paid per Mcf by New York to Hope. In New York's tariff, one of the several elements that are listed to make up its "cost of service" to be collected from East Ohio and Peoples is one for the "cost of gas." Manifestly, if the Hope supply continues as planned to flow into the present New York Natural storage pools (along with the rest of New York's purchases), that portion of the total inventory would not, on the record, bear its cost since the price now being paid for it will cease to be paid. Unless some rearrangement is made, this will be a windfall to East Ohio and evidently to Peoples also—that is, without some formula designed to record a cost for that gas that will equal the price now paid by New York to Hope, or some other proper rate for that portion of New York's storage supply.

A related difficulty is that Hope also operates storage pools and, under the normal procedure, after merger both companies' sets of pools would be expected to be "rolled together" for averaging an over-all cost. This would produce certain dislocations and be quite inconsonant with the program to maintain, for the present, exactly the current services, rates and charges. (As noted on page 160, both sets of rates were reviewed by FPC in the past year and approved by orders of July 17, 1964, after a million-dollar rate reduction by New York Natural.)

To meet the problem, the applicant devised and submitted a program, but they were requested by the Staff to submit it for separate approval. Exhibit Q to the application called to attention that this proposal is being submitted under a separate request for Commission approval, hence the problem was not part of this case at the time it came on for hearing and it is not mentioned in the discussion which appears in the notice of application of July 17, 1964. In fact, nothing was even heard about it at the prehearing conference.

At the final one-day hearing the proposed procedure was explained, and at this stage objections were first stated, the Cities then claiming their right to be heard and to cross-examine the bases for the program which had been devised. To obviate any question on this score, the applicant moved to amend the application to include its request for approval of the plan, which was allowed. 2T359, 377.

---

[11] When there came before the First Circuit the SEC's order to dissolve two subsidiaries of Ebasco which unduly complicated the system, the court understood this step was only a part of the entire program and of an eventual larger proceeding to deal with the entire system, but the court felt it not necessary at that time and place to size up the whole situation, nor to consider what may be in mind with respect to the numerous other problems of organization to come up later on. *American Power and Light Company* v. *S.E.C.* (CA1–1944), 141 F. 2d 606, 620.

The program referred to, as set out in the company's separate letter of June 12, 1964 (not in this docket but now Item E in this record), is in two steps:

(A) To price separately the cost of gas stored in the former Hope and New York Natural storage pools in the same manner as Hope and New York Natural are now pricing these costs;

(B) However, in calculating the weighted average cost of all gas acquired for the former New York Natural system operations *and* actually injected into their storages, to include the volumes and dollar costs of the gas purchased by Hope-Consolidated Gas in Louisiana. This pricing to be in lieu of that for the gas now purchased by New York Natural from Hope, since that sale will cease.

There is no particular reason to object to step (A), since separate costing and pricing of the two sets of pools may be permitted under the regulations. It is today's method as followed by the separate companies, and its continuance is quite consonant with the company's program to continue the same sales and rates and to maintain separate cost subaccounts. Hence this step is approved.

But step (B)—assigning to Hope's gas its Louisiana cost figures—is another matter. Re-emphasizing time and again that the sole purpose is to maintain the present level of costs and prices, the company "ran a test" of this program against the actual volumes sold by New York Natural in 1963 and those projected for 1965. The result is to lower them by just $3,000 per year, or .023 of one percent, which of course is substantially the same.

If it were true that Hope's present share of New York Natural storage gas were entirely from Louisiana production, then the effect of step (B) would be to continue exactly the present situation. There is no such evidence; in fact, no one at the hearing seemed to know (2T354–358), nor is there any other evidence that the Louisiana formula, step (B), truly and fairly reflects the cost of Hope's share of New York Natural's storage gas procurement—except, that is, the test run referred to which shows that, for two certain years, by coincidence or otherwise, the new formula works out about right. What is lacking is some analysis to show that the Hope gas—which actually comes from many sources—is truly and fairly priced by assigning to it the price which Hope pays to its Louisiana sources. This hiatus is not a lack in the company's preparation, which is most carefully and adequately done, but rather it is due to the procedural difficulty that the company was required to omit this matter from its application as filed in this docket.

Without further examining the merits of formula (B), it is hard to deny the Cities' real point that the proposal amounts to a change in rate and it must be filed and dealt with as such if their procedural rights are to be preserved. To test the point, it is necessary only to refer to the present New York tariff for its storage (item C by reference). By this document, at page 14, the two affiliated customers are required to pay a sum of money referred to as "cost of service", which is defined as all charges under the heading (i) cost of gas, (ii) cost of storage, (iii) cost of transmission, and (iv) cost of inbound handling. The critical element, "cost of gas", is defined on the next page as the number of Mcf delivered from storage "multiplied by the weighted average cost per Mcf of Seller's inventory in both Storage Properties . . .".

What formula (B) proposes is to interpret the words "weighted average cost per Mcf of Seller's inventory in both storage properties" *not* for what they plainly say—the average cost of the actual storage inventory—but instead, for Hope's part of that inventory, to substitute the cost of the company's purchases in Louisiana and to presume, whether rationally or arbitrarily, that this cost will be about the same as the true average cost of the true storage inventory (meaning, of course, the Hope share of it).[12] It is not at all understood how this revision of the plain words of the tariff can be described as mere bookkeeping, especially in view of the testimony that without this revised interpretation the rate under this tariff or the actual resulting cost will necessarily go down about seven or eight hundred thousand dollars per year. The point is that when Hope-Consolidated adopts this tariff the term "cost of service" will mean Hope-Consolidated's costs, not New York Natural's; and unless there is this revision or reinterpretation or new application of the definition, the words used will result in an unwarranted reduction in the amount referred to. But when there is a change in the interpretation and application of a tariff, there is inevitably a change in rate in the legal sense, unless such words have quite lost their meaning. As in the case of statutes, a new construction and application of the words of the tariff can be effective to alter its plain meaning quite as much as if it were a verbal amendment.

It is just for this reason that Section 4 of the Natural Gas Act, setting out the procedure for rate changes, their filing, public notice, complaint, hearing and decision, refers also to "practices, and regulations affecting such rates and charges", which are not to be changed without a new filing, public notice, possible suspension and hearing, and all subject to the Commission's order thereon.

This is not to suggest that formula (B) is necessarily wrong or unjustified—it is an obviously, indeed admittedly, pragmatic adjustment, open to change in the next rate case, and perhaps the best that can be devised under the circumstances. But all of this does suggest that this new and different application of the words of the tariff is the very equivalent of a revision of its actual words; and, in fairness, the procedure should be that which the law provides for a change in the rate or tariff. No reason appears why the substance of formula (A) and (B) should not presently be filed as a rate change, to be followed by the regular procedures set out in Section 4 of the Natural Gas Act. Accordingly, the condition hereto attached so provides.

VII

FINDINGS AND ORDER

Upon consideration of the entire record it is found and concluded that—

(1) Hope Natural Gas Company, a West Virginia corporation with its principal place of business in Clarksburg, West Virginia, (which is to be renamed Consolidated Gas Supply Corporation) is a "natural-gas company" within the meaning of the Natural Gas Act.

(2) New York State Natural Gas Corporation, a New York corporation with its principal place of business in Pittsburgh, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act.

(3) The facilities of New York State Natural Gas Corporation, as more fully described in the application and the evidence herein, are proposed to be acquired by merger and operated by Hope-Consolidated Gas for the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the acquisition and operation of these facilities are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The sales of natural gas made from and other services rendered by the facilities to be acquired from New York Natural will be in interstate commerce, subject to the jurisdiction of the Commission and the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

---

[12] The Staff brief reemphasizes the need to incorporate some proper charging provision for Hope's share of the New York storage gas and, in view of the test run made, is willing to accept this Louisiana formula but only with the *proviso* that it does not prejudice the treatment of these costs in any future rate case.

(5) Subject to the requirements of this order and the conditions of the certificates issued hereunder, Hope-Consolidated Gas is able and willing properly to do the acts and perform the services proposed and to conform to the provisions of the Natural Gas Act, and to the requirements, rules and regulations of the Commission thereunder.

(6) The acquisition and continued operation of the facilities proposed to be acquired by Hope-Consolidated Gas from New York Natural, and the sales of natural gas and other services proposed are subject to the jurisdiction of the Commission and required by the public convenience and necessity, and a certificate therefor should issue as hereinafter ordered and conditioned.

ACCORDINGLY, *It is Ordered*, subject to review by the Commission, that

(A) A certificate of public convenience and necessity is hereby issued, upon the terms and conditions of this order and subject to all provisions of the Natural Gas Act and the Commission's Regulations thereunder, authorizing Hope-Consolidated Gas to acquire and operate, under the name of Consolidated Gas Supply Corporation, all of the natural gas facilities of New York Natural subject to the jurisdiction of the Commission, as more fully described in Hope's application in Docket No. CP63-272.

(B) The name of Consolidated Gas Supply Corporation be and the same is hereby substituted, effective as of the date of consummation of the merger of New York State Natural Gas Corporation into Hope Natural Gas Company, for that of Hope and of New York Natural in all certificate and other authorizations heretofore issued pursuant to the Natural Gas Act by this Commission to the respective companies.

(C) The certificates issued by paragraphs (A) and (B) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (d)(1), (d)(2) and (e) of Section 157.20 of the Commission's Regulations under the Natural Gas Act.

(D) Substantially concurrently with the consummation of the merger contemplated by this order, Consolidated Gas Supply Corporation shall file with the Commission, in accordance with its Regulations under the Natural Gas Act, the following:

(i) Notice of Cancellation of Hope's service agreement with New York Natural in accordance with the form set forth in Schedule 1 of Exhibit 6.

(ii) Certificate of Adoption of New York Natural's FPC Gas Tariff, Third Revised Volume No. 1, together with service agreements thereunder currently in effect, and its FPC Gas Tariff, Original Volume No. 2, together with the contracts embodied therein as special rate schedules, in accordance with the form set forth in Schedule 2 of Exhibit 6, and

(iii) Notice of Change of Name pertaining to Hope's FPC Gas Tariff, First Revised Volumes Nos. 1 and 2, and its related service agreements and contracts on file with the Commission, in accordance with the form set forth in Schedule 3 of Exhibit 6.

(E) Within 90 days following the filings referred to in Paragraph (D) above, Consolidated Gas Supply Corporation shall file with the Commission a tariff with the sheets bearing the correct name of that company to replace the tariff of Hope continued in effect and the tariff of New York Natural previously adopted. This tariff will take the form of three volumes, as follows:

(i) *Original Volume No. 1*—will embody the rate schedules now contained in First Revised Volume No. 1 of Hope's FPC Gas Tariff and Third Revised Volume No. 1 of New York Natural's FPC Gas Tariff with appropriate company name and other formal changes, including redesignations of the rate schedules to reflect the continuation of Hope's rate zones 1 and 2 with the same designations and the continuation of New York Natural's rate zones 1 through 4 redesignated as zones 3 through 6.

(ii) *Original Volume No. 2*—will embody the special rate schedules now contained in Original Volume No. 2 of New York Natural's FPC Gas Tariff with the appropriate company name and other formal changes.

(iii) *Original Volume No. 3*—will embody the special rate schedules now included in Original Volume No. 2 of Hope's FPC Gas Tariff with appropriate company name and other formal changes.

(F) As a part of its new tariff volume Number 2, Hope-Consolidated Gas shall file, under and pursuant to Section 4 of the Natural Gas Act and the regulations thereunder, a sheet or sheets setting forth its program for storage accounting and pricing under the former New York State Natural OSS tariff, designed to be effective upon consummation of the merger herein referred to.

(G) The certificate is issued upon the further condition that the applicant herein first obtain the necessary approval from the Securities and Exchange Commission.

WILLIAM L. ELLIS
Presiding Examiner

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PUBLIC UTILITY DISTRICT NO. 1 OF DOUGLAS COUNTY, WASHINGTON, PROJECT NO. 2149

ORDER APPROVING REVISED PROJECT EXHIBITS AND ADJUSTING INITIAL AUTHORIZED INSTALLED CAPACITY AND ANNUAL CHARGES

(Issued February 2, 1965)

On January 27, 1965, Public Utility District No. 1 of Douglas County, Washington (Applicant) filed application for Commission approval of revised Exhibits L and M for its Wells Project No. 2149 located on the Columbia River, Washington.

The license for Project No. 2149 provides for the installation of seven generating units initially and three additional units ultimately. Public notice of application in Project No. 2149 for ten generating units (seven initially with provision for three additional units ultimately) was issued May 26, 1961 (26 F.R. 5024). Plans for the initial installed capacity of seven generating units having a total capacity of 541,975 kw have been approved. These revised plans include the three additional units of 77,425 kw capacity each. The revised exhibits show the initial installation of the project to be the ultimate ten generating units of 77,425 kw capacity each, totalling 774,250 kw. The initial installation of the ten-unit ultimate capacity is not an alteration requiring further public notice.

Applicant advises that if it can exercise by February 15, 1965, its options to include the three generating units in its existing contracts for the manufacture and installation of the initial seven units, the cost to Applicant of the three units is estimated to be $18,600,000 which would be financed by the issuance of additional electric revenue bonds supported by existing contracts for the purchase of project power by investor-owned utilities in the area. Amendments of such existing contracts have been negotiated to provide for the purchase of the output of the three additional units, to become effective upon completion of suitable financing of the three additional units. Savings to Applicant by making the initial installation the ultimate capacity of ten units will approximate $7,000,000.

According to the application, benefits from the first increment of Canadian Storage will be available starting April 1, 1968, with total benefits therefrom by April 1, 1973. Completion of the ultimate ten-unit capacity of Project No. 2149 before July 1968, as requested in the application, will allow Applicant to utilize the improved stream flow from Canadian Storage Projects when it becomes available, as required by Article 38 of the project license.

Estimates supplied by Applicant, adjusted by our staff to eliminate the cost of transmission facilities and bond fund requirements, yield comparable at-site capital costs of $161,960,000 for the initial installation of seven units; $185,790,000 for the initial installation of seven units to be followed by the installation of the three future units in time to go into full commercial operation in 1973; and $177,920,000 for the initial installation of the ultimate ten units. The savings in capital costs by initial instead of future installation of three additional units is thus estimated by our staff to be $7,870,000. Initial installation of the three units would require additional at-site capital costs of $15,960,000 and would result in an annual net benefit, after allowances for Canadian storage, of $1,990,000 if all project output is salable when the three units are completed in 1968, as contemplated in the subject application. Completion of the initial installation of the ten-unit ultimate capacity of the project by July 1968 would fall well within the scheduled completion date, fixed in the Commission's order issued August 16, 1963, as September 1, 1970.

While we are herein approving revised Exhibit L, designated as Exhibit L–2, which supersedes the sheets of like-numbered Exhibit L–1, now parts of the license and which should be eliminated from the license sheet 1A of Exhibit L–1, now part of the license, though superseded in substance, should not be removed from the license because it has been approved by the Chief of Engineers, Department of the Army. Its removal from the license will be effected when its superseding sheet has been approved by the Chief of Engineers, pursuant to Section 4(e) of the Federal Power Act.

The initial installation of ten instead of seven generating units will increase the installed capacity of the project from 541,975 kw to 774,250 kw with a resultant increase in the annual charges under the license. Accordingly, the license should be modified to show the new authorized installed capacity for annual charge purposes as 1,032,000 horsepower.

The Commission finds:

(1) The following described Exhibit L drawings, and revised Exhibit M (Revised January 25, 1965) entitled "General Description of Equipment", except insofar as it relates to the design of fish handling facilities, conform to the Commission's rules and regulations and should be approved as part of the license for the project:

Exhibit L–2	F.P.C. No.	Title: Wells Hydroelectric Project—Columbia River Hydro-Combine
Sheet 1A	2149–96	General layout.
Sheet 9A	2149–97	Sectional plans.
Sheet 9B	2149–98	Sectional plans.
Sheet 9C	2149–99	Sectional plans.
Sheet 10A	2149–100	Sectional plans.
Sheet 10B	2149–101	Sectional plans.
Sheet 11A	2149–102	Sectional plans.
Sheet 12A	2149–103	Sectional plans.

(2) Exhibit L-1, Sheets 4A, 4B, 9A, 9B, 9C, 10A, 10B, 11A, 12A, 13A, 13B and 13C (FPC Nos. 2149-67, -86, -72, -88, -93, -73, -89, -74, -75, -76, -90 and -94 respectively) and Exhibit M (Revised July, 1963), now parts of the license, will be superseded, and eliminated from the license for the project.

(3) The presently authorized installed capacity of the project for the purpose of computing the capacity component of the administrative annual charge is by this order increased from 723,000 horsepower to 1,032,000 horsepower, and the amount of annual charges, based on such increased capacity, to be paid under the license for the project for the costs of administration of Part I of the Act is reasonable.

The Commission orders:

(A) The revised Exhibit L drawings and Exhibit M, except insofar as the latter relates to the design of the fish handling facilities, described in finding (1) above are hereby approved as part of the license for the project, and the Exhibit L drawings and Exhibit M, described in finding (2) above, are hereby eliminated from the license for the project.

(B) Article 46(i) of the license for the project is hereby further amended, effective as of January 1, 1965, to show 1,032,000 horsepower as the authorized installed capacity of the project for annual charge purposes.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgment of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

ST. MICHAELS UTILITIES COMMISSION, AND COMMISSIONERS OF ST. MICHAELS, MARYLAND v. THE EASTERN SHORE PUBLIC SERVICE COMPANY OF MARYLAND, E-7114; STOCKTON LIGHT AND POWER COMPANY (OF MARYLAND), AND STOCKTON LIGHT AND POWER COMPANY (OF VIRGINIA) v. THE EASTERN SHORE PUBLIC SERVICE COMPANY OF MARYLAND, E-7117; DELAWARE POWER & LIGHT COMPANY, THE EASTERN SHORE PUBLIC SERVICE COMPANY OF MARYLAND, THE EASTERN SHORE PUBLIC SERVICE COMPANY OF VIRGINIA, E-7137; CITY OF DOVER, DELAWARE v. DELAWARE POWER & LIGHT COMPANY, E-7175

ORDER DENYING MOTION TO SEVER

(Issued February 3, 1965)

The St. Michaels Utilities Commission, the Commissioners of St. Michaels, Maryland, and the City of Dover, Delaware, on January 15, 1965, filed a motion in the above-consolidated proceedings requesting severance of issues other than one relating to alleged unlawful rate discrimination by Delaware Power and Light Company and its subsidiaries against St. Michaels and Dover and in favor of certain electric cooperative corporations, namely Choptank Electric Cooperative, Inc. and Delaware Electric Cooperative, Inc. On January 22, 1965, an answer was filed by Delaware Power and Light Company. On January 25, 1965, an answer was filed by Stockton Light and Power Company supporting and joining in the motion of St. Michaels and Dover.

The moving parties contend that the public interest requires that the unlawful rate discrimination issue should be before the Commission for decision simultaneously with the discrimination issue raised in *Southwestern Public Service Company*, Docket No. E-7038. They further ask that the presiding examiner be directed to conclude the hearing on the discrimination issue at the hearing session commencing February 8, 1965, and suggest that the intermediate decision procedure be omitted.

In our opinion, questions of discrimination largely depend on the factual situation in each individual case as shown by the whole record. Of importance in this connection would be the portions of the record relating to cost of service. Therefore it would not assist in reaching a determination in this case (or in *Southwestern*) to separate the discrimination issue here and consider it with another proceeding where the circumstances are very different. Furthermore, what movants suggest would mean delaying the decision in *Southwestern* even if we omitted the intermediate decision procedure in this proceeding, for we would be obliged to grant time for adequate briefing.

The Commission orders:

The motion to sever made by the St. Michaels Utilities Commission and Commissioners of St. Michaels, Maryland, and the City of Dover, Delaware, and joined in by Stockton Light and Power Company, is hereby denied.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

COLORADO INTERSTATE GAS COMPANY, DOCKET NO. G-9666

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 4, 1965)

On November 13, 1964, Colorado Interstate Gas Company (Applicant) filed in Docket No. G-9666 an application pursuant to Section 7(c) of the Natural Gas Act to amend the order of the Commission issuing a certificate in said docket by authorizing permanent deliveries of natural gas to Northern Gas Company (Northern) in lieu of emergency deliveries heretofore authorized, all as more fully set forth in the application.

The Commission has heretofore authorized the construction and operation of facilities and the sale of natural gas on an emergency basis to Northern at Laramie, Wyoming, under Applicant's Rate Schedule E-1. Northern now desires gas deliveries of up to 200 Mcf per day on a permanent basis under Applicant's Rate Schedule G-1 and interruptible deliveries under Rate Schedule IS-2 for resale and distribution in the City of Laramie and environs. Applicant will use the same meter station and lateral line heretofore authorized for the emergency deliveries.

Applicant estimates that annual firm and interruptible sales of gas to Northern will be 73,000 Mcf and 227,000 Mcf, respectively.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been received.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the order issuing a certificate to Applicant in Docket No. G–9666 should be amended by authorizing permanent in lieu of emergency deliveries of natural gas to Northern Gas Company as hereinafter ordered and conditioned.

The Commission orders:

(A) The order issuing a certificate of public convenience and necessity in Docket No. G–9666 be and the same is hereby amended by authorizing Applicant to sell and deliver natural gas to Northern Gas Company on a permanent in lieu of an emergency basis pursuant to Applicant's Rate Schedules G–1 and IS–2, as hereinbefore described and as more fully described in the application to amend; and in all other respects said order shall remain in full force and effect.

(B) The sale and delivery of natural gas pursuant to Rate Schedule G–1 shall not exceed 200 Mcf per day at 14.73 psia.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CITY OF COLTON, CALIFORNIA v. SOUTHERN CALIFORNIA EDISON COMPANY, DOCKET NO. E–6821; SOUTHERN CALIFORNIA EDISON COMPANY, DOCKET NO. E–7019

ORDER PROVIDING FOR APPROVAL OF RATE SETTLEMENT AND ACCEPTING RATE SCHEDULES FOR FILING

(Issued February 4, 1965)

This order, by accepting as consistent with public interest a proposed plan of settlement submitted by the parties on December 14, 1964, brings to a conclusion a long pending complaint proceeding involving the Commission's jurisdiction over the rates charged by the Southern California Edison Company (Edison) to the City of Colton, California. Under the plan which we are approving, Edison proposes a refund of $185,000 to Colton in settlement of all claims between the Company and the City and is submitting schedules reducing the Company's rates and charges to Colton to the level of the Company's interstate wholesale rates and charges for service to other municipally owned and investor owned resale customers. In our opinion, acceptance of the proposed plan of settlement described hereafter is in the public interest.

As indicated above the settlement agreement provides for settlement of all claims arising out of rates for electric service for which payment was made by Colton on or before July 31, 1964. They include (1) all refunds claimed by the City of Colton for the period July 1, 1954, to October 1, 1961, arising out of Edison's special reserve fund established pursuant to Commission Opinion No. 346 (26 FPC 223), as amended by Commission order issued September 14, 1961 (26 FPC 492), and (2) all claims for refund of monies paid or for payment of monies due arising out of Edison's billing to the City of Colton under Rate Schedule FPC No. 2. That Schedule was filed by Edison on December 1, 1961 and became effective, subject to refund, on June 1, 1962, pursuant to Commission order issued December 28, 1961, Docket No. E–7019.

In further accordance with the settlement agreement Edison submits for filing, pursuant to Section 205 of the Power Act, the Company's rate schedules "R" and "R–1", designated for this Commission's purposes as Edison's Rate Schedules

FPC Nos. 26 and 27, respectively.[1] Edison requests that rate schedules "R"[2] be made effective for its wholesale electric service to Colton for the period June 1, 1962, through January 26, 1964 and rate schedule "R-1"[3] be made effective commencing January 27, 1964, the date on which the latter schedule became effective on Edison's system.

In addition the settlement agreement provides: (1) recognition that Colton may elect to take service at Edison's lower "R-2" rate upon compliance with the terms of service; (2) recognition that Colton may elect to apply to this Commission for service at the "R-2" or other appropriate rate without regard to Edison's service condition of a 10-year contract term; (3) agreement by both parties to request the Commission's permission for disposal of the special reserve created pursuant to Commission Opinion No. 346 by crediting to Account 216, Unappropriated Earned Surplus, all amounts now in that special reserve and for waiver of the requirements of this Commission's Regulations to the extent necessary to effectuate all provisions of the settlement agreement; and (4) agreement by Edison to file a request for dismissal of proceedings currently pending in the United States Court of Appeals for the Ninth Circuit and in Superior Court of the State of California for the County of San Bernardino[4] subsequent to this Commission's acceptance for filing of the aforementioned "R" and "R-1" rate schedules and approval of the parties' plan for disposition of the special reserve in Docket No. E-6821. There will be a pro forma adjustment for amounts paid by Colton after July, 31, 1964, to the date of approval by the Commission of the proposed settlement.

While Edison has provided wholesale power service to Colton since at least 1954, prior to the commencement of this proceeding, it had not filed its rates for such sales with this Commission. In Opinion No. 346, the Commission found that Edison's wholesale sales for resale to the City of Colton have been subject to its jurisdiction under the Federal Power Act at least since July 1, 1954. Accordingly, the Commission there ordered Edison to file the rate contained in its contract for service to Colton as of that date. That contract dated October 1, 1945, is embodied in Edison's Rate Schedule FPC No. 1.

Additionally, the Commission, as a part of its Opinion No. 346 and Order, required Edison to establish a special reserve for all amounts, together with interest thereon at 6 percent per annum, collected from Colton in excess of those that would have been collected by Edison under the 1945 contract rate. Subsequently, Edison and the California Public Utilities Commission filed a joint petition for review of the Commission's order in the United States Court of Appeals for the Ninth Circuit which set aside the Commission order (310 F. 2d 784). On certiorari the United States Supreme Court reversed the Court of Appeals for the Ninth Circuit, holding that Edison's sales for resale to Colton were interstate wholesale sales subject to the jurisdiction of this Commission under the Federal Power Act. *F.P.C.* v. *Southern California Edison Company,* 376 U.S. 205. That proceeding is presently before the Court of Appeals for the Ninth Circuit upon remand from the Supreme Court.[5]

---

[1] Edison's proffered Rate Schedule FPC No. 26 supersedes its currently effective Rate Schedule FPC No. 2, and in turn is superseded by Edison's proffered Rate Schedule FPC No. 27.

[2] Edison's proffered schedule "R" rate provides for a demand charge at each meter of $200 for the first 200 kw or less, $.95 per kw for the next 4,800 kw, $.75 per kw for the next 5,000 kw, and $.65 for all additional kw. The energy charge is .93¢ per kwh for the first 150 kwh per kw of billing demand; and .83¢ per kwh for the next 150 kwh per kw of billing demand, and .62¢ for all additional kwh.

[3] Edison's proffered schedule "R-1" rate contains a demand charge at each meter of $458.75 for the first 500 kw or less, $.85 per kw for the next 1500 kw, $.75 per kw for the next 8,000 kw, $.60 per kw for the next 40,000 kw, and $.55 per kw for all additional kw. The energy charge for the first 150 kwh per kw of billing demand is 1.9¢ per kwh for the first 15,000 kwh and 1.0¢ per kwh for the remaining kwh; .8¢ per kwh for the next 150 kwh per kw of billing demand, and .6¢ per kwh for all additional kwh.

[4] Edison delivered a "Notice of Rescission" of the 1945 contract, dated August 28, 1961, to Colton, and filed a "Complaint for Rescission and Restitution, for Declaratory Relief, and for Reformation", dated August 28, 1961, in the Superior Court of California, County of San Bernardino, Case No. 107169, *Southern California Edison Co.* v. *City of Colton.*

Following our assertion of regulatory jurisdiction, Edison as heretofore indicated, on December 1, 1961, proposed substantially increased rates for service to Colton. By order of hearing and suspension issued December 28, 1961, we directed a hearing as to the lawfulness of Edison's rates and charges to Colton, Docket No. E-7019. To date, no hearings have been held in the rate suspension proceeding, Docket No. E-7019. Following the end of the five month maximum suspension period, Edison's increased rates to Colton (Rate Schedule FPC No. 2 superseding the 1945 rate designated as Rate Schedule FPC No. 1) became effective June 1, 1962. Colton paid the Rate Schedule FPC No. 2 rate from June 1, 1962, until December 31, 1962. Subsequently, the City refused to pay in accordance with Edison's Rate Schedule FPC No. 2. The action followed the decision of the Ninth Circuit setting aside Commission Opinion No. 346 on November 15, 1962. Colton then paid Edison in accordance with the Company's lower "R" rate approved by the California Public Utilities Commission on November 9, 1957.

The agreement negotiated by Edison and Colton eliminates the additional delay and expense of further litigation or hearing of the remaining issues in dispute between the parties while providing Colton with a substantial compensation for the higher rates it paid to Edison as a result of increased rate schedules which should have been but were not filed with this Commission for its approval. Moreover, application of Edison's proposed "R-1" rate will result in a reduction of approximately $110,000 in annual charges to Colton based upon 1964 revenues of Edison computed in accordance with its Rate Schedule FPC No. 2. It is our view that the proposed settlement agreement is in the public interest. It is our further view that it is in the public interest and good cause has been shown for Edison's proffered rate schedules "R" and "R-1" to be made effective as of June 1, 1962 and January 27, 1964, respectively.

The proceeding in Docket No. E-7019 is terminated as hereinafter provided. In the event of dismissal of the proceeding currently pending in the United States Court of Appeals for the Ninth Circuit involving this Commission's Opinion No. 346 and Order, the proceeding in Docket No. E-6821 will be terminated. By our action in this order we indicate our approval of Edison's accounting entries for disposition of the special reserve fund established pursuant to our order of July 31, 1961 (26 FPC 223, 237-38).

The Commission finds:

(1) Good cause has been shown for waiver of the prior notice requirements of Section 205 of the Federal Power Act and acceptance for filing of Edison's proposed Rate Schedule FPC No. 26 to become effective for the period from June 1, 1962 through January 26, 1964, and Edison's proposed Rate Schedule FPC No. 27 to become effective as of January 27, 1964.

---

[5] Remaining issues on remand before the Court of Appeals for the Ninth Circuit include questions concerning matters other than jurisdictional items; *i.e.,* challenges to the Commission's application of its rate schedule filing requirements, exclusion of certain proffered evidence and the Commission's provision for the special reserve account referred to above.

(2) It is necessary and appropriate for the purposes of the Federal Power Act that the rate suspension proceeding in Docket No. E-7019 be terminated as hereinafter ordered.

(3) The plan of disposition of amounts included in Edison's special reserve account established as directed by Opinion No. 346 and Order is consistent with the purposes of that Opinion and Order and the provisions of the Federal Power Act.

The Commission orders:

(A) The prior notice period provided in Section 205(d) of the Federal Power Act is hereby waived with respect to the proposed rate schedules referred to in finding (1) above, and they are hereby allowed to take effect as of the dates set forth therein.

(B) The issuance of this order shall constitute full notice of the filing and publication of the rate schedules in question insofar as their effective date is concerned.

(C) Nothing contained in this order shall be construed as a waiver in any other respect of the requirements of Section 205(d) of the Federal Power Act or the Commission's Regulations thereunder; nor shall it be construed as constituting approval by this Commission of any service, rate, charge, classification, or any rule, regulation, contract, or practice affecting such service or rate provided for in the rate schedules as above designated, nor shall this order be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service or rate.

(D) This order is without prejudice to any findings or orders which have been or hereafter may be made by this Commission in any proceeding by or against Edison.

(E) The Commission proceeding in Docket No. E-7019 is hereby terminated.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

THE DETROIT EDISON COMPANY AND CONSUMERS POWER COMPANY, DOCKET NO. E-7206;[1] THE DETROIT EDISON COMPANY, DOCKET NO. E-7207[2]

ORDER DESIGNATING APPLICATIONS FOR HEARING

(Issued February 4, 1965)

On November 13, 1964, The Detroit Edison Company (Detroit) and Consumers Power Company (Consumers) jointly filed an application pursuant to Section 202(e) of the Federal Power Act for an order authorizing the transmission of electric energy from the United States to Canada.[1] On the same date,

---

[1] The application was filed and public notice subsequently given thereof under Docket No. E-6515, the docket under which Detroit secured its original authorization to transmit power to Canada in 1953 and under which it has secured several modifications of that order. Since the present application is made in the name of Consumers as well as Detroit, and to help make clear that our action herein is independent of and does not affect the outstanding authorizations granted under the style of Docket No. E-6515, we have renumbered the present docket.

[2] This permit is also being given a new FPC docket number to distinguish it from the permit issued to Detroit on October 12, 1953 (Docket No. E-6516), authorizing the construction, operation, and maintenance of two lines between the United States and Canada which are not affected by our present action.

Detroit filed a separate application, in its name alone, for a Presidential Permit, pursuant to Executive Order No. 10485, dated September 3, 1953, to construct, operate, maintain, and connect additional facilities at the borders of the United States for the transmission of electric energy between the United States and Canada.[2]

Consumers, a corporation organized under the laws of the State of Maine, is authorized to do business as a foreign corporation in the State of Michigan and maintains its principal place of business at Jackson, Michigan. Detroit, a corporation organized under the laws of the State of New York and authorized to do business as a foreign corporation in the State of Michigan has its principal place of business at Detroit, Michigan.

Detroit (but not Consumers) presently is authorized, pursuant to an order of the Commission in Docket No. E–6515 of November 6, 1953, 12 FPC 1359, as amended by orders of December 17, 1956, 16 FPC 1348, and April 6, 1964, 31 FPC 781, to transmit a maximum of 1,000,000,000 kilowatt-hours annually of electric energy to the Hydro-Electric Power Commission of Ontario (Hydro) at a maximum transmission rate of not to exceed 600,000 kilovolt-amperes. It effects these transfers by means of two transmission lines between the United States and Canada for which a Presidential Permit was issued by the Commission pursuant to Executive Order 10485 on October 12, 1953. These are a 120,000 volt line crossing the Detroit River between Detroit, Michigan and Windsor, Ontario and a 115,000 volt line crossing the St. Clair River between Marysville, Michigan and Sarnia, Ontario. The latest application approved by the Commission was in April, 1964 and permitted Detroit to expand the use of existing facilities to their full capacity.

The instant applications would provide for a new EHV transmission line between the United States and Canada and would bring Consumers into the exchange for the first time. They constitute a major broadening and expansion of the cross-border exchanges.

In Docket No. E-7206, Detroit and Consumers would increase the maximum rate of transmission from 600,000 kilovolt-amperes to 750,000 kilovolt-amperes at present by using the new cross-border transmission line for which Detroit is seeking a permit in Docket No. E-7207. The new line is to be constructed by Detroit between the two existing lines described above and connecting Detroit's St. Clair Station in East China Township near St. Clair, Michigan and Hydro's Lambton Station to be located near Courtright, Ontario.

The new line is proposed to be operated initially at 230 kv, but would be designed for conversion to 345 kv. The capacity of this line operating initially at 230 kv will be 450,000 kva and when operated at 345 kv may be as high as 1,000,000 kw.

Section 202(e) of the Federal Power Act precludes us from issuing an order authorizing the transmission of power from the United States to a foreign country if it would either (1) impair the sufficiency of electric power in the United States or (2) would "impede or tend to impede the coordination in the public interest of facilities subject to jurisdiction of the Commission." The Executive Order contemplates that the issuance of a permit will be based upon a finding that the commission's action is consistent with the public interests. These general standards must be applied in the light of the directive of Section 202(a) of the Act that the Commission should promote the voluntary interconnection and coordination of facilities for the generation, transmission, and sale of electric energy "[f]or the purpose of assuring an abundant supply of electric energy throughout the United States with the greatest possible economy and with regard to the proper utilization and conservation of natural resources."

---

[2] See footnote on page 177.

On the basis of the material before us, a question is raised whether the applicants meet these standards. Hydro is directly interconnected to the East with both the Niagara Mohawk Power Corporation, a public utility under the Federal Power Act, and the Power Authority of the State of New York (PASNY), and through them with numerous other utility systems in the eastern part of the United States. It is clear therefore that applicants' interconnections with Hydro could form part of an integrated electrical system tying the Midwest to the East to the mutual benefit of the companies and power consumers in both regions. See National Power Survey Report pp. 235–6. However, the underlying agreement between Detroit, Consumers, and Hydro contains a number of provisions which appear to be intended to frustrate such coordination in the public interest. In substance they are designed to insure that "any energy which Michigan may export to Hydro is to be used only within Canada, and any energy which Michigan may import from Hydro is to be generated wholly within Canada." The following is quoted from Supplement C to the Interconnection Agreement:

B. *Supplement C to Interconnection Agreement*

> 1. It is the intent of the parties to this interconnection agreement to assure continuation of the operation of their systems within the scope of Section 202(f) of the Federal Power Act which provides that, "The ownership or operation of facilities for the transmission or sale at wholesale of electric energy which is (a) generated within a State and transmitted from that State across an international boundary and not thereafter transmitted into any other State, or (b) generated in a foreign country and transmitted across an international boundary into a State and not thereafter transmitted into any other State, shall not make a person a public utility subject to regulation as such under other provisions of this part." Therefore, as in the past, any energy which Michigan may export to Hydro is to be used only within Canada, and any energy which Michigan may import from Hydro is to be generated wholly within Canada.
>
> 2. In order to assure that Michigan energy exports are always consumed wholly within Canada all of the following conditions must exist while Michigan is delivering energy to Hydro:
>
> (a) The direction of energy flow as monitored at the Beck #2 terminals on each of the five 230 kv, 60-cycle lines and the 115 kv, 60-cycle Beck-Caledonia line shall be in a westerly direction. Michigan will be advised if a reversal of direction appears remotely possible which could only occur under very unusual conditions. Energy delivery from Michigan will then be reduced or discontinued to prevent such reversal of direction.
>
> An exception to the above can be made if the direction of energy flow on all 60-cycle Hydro-New York interconnections at Niagara Falls is toward Hydro. Recording meter charts for the above six lines shall be mailed to Edison each week for retention.
>
> (b) During periods of 25-cycle energy flow from Hydro to New York the direction of energy conversion through the frequency converters at Buchanan Transmission Station and Beck #1 Generating Station must be toward the 60-cycle Hydro system, or the existence of one or more null points within Hydro's 25-cycle system must be demonstrated, beyond which points Michigan energy cannot pass.
>
> 3. In order to assure that Hydro energy deliveries to Michigan are always wholly generated within Canada all of the following conditions must exist while Hydro is delivering energy to Michigan:

(a) Hydro will not schedule energy delivery to Michigan coincident with a purchase, including water transfers, of 60-cycle energy from New York unless a physical break is made in Hydro's 60-cycle system, or the existence of one or more null points in that system are demonstrated, beyond which points New York energy cannot pass.

(b) During periods of 25-cycle energy flow from New York to Hydro the direction of energy conversion through the aforesaid frequency converters must be toward the 25-cycle system, or the existence of one or more null points in Hydro's system must be demonstrated, beyond which points New York energy cannot pass.

4. Hydro shall inform Michigan of any changes of Hydro facilities which will alter paths for possible energy flows between New York and Michigan.

These provisions raise substantial questions as to whether the proposed expansion of the interconnections and interchanges of power with Hydro in its present form will not "impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Commission" and also may not be "inconsistent with the public interest."

We wish to make clear that it is not the fact that applicants seek stronger interconnections with a Canadian utility system which raises the problems discussed herein. As part of a pattern of interchange of energy by the applicants with all utilities with whom they can effectively interconnect in the public interests, an additional interconnection between applicants and Hydro could be useful and desirable. The question is, rather, whether the restrictions imposed on Hydro's freedom of operation in relations to the power exchanges with other United States utilities tends to impair coordination of all such facilities in the public interest.

Accordingly, the Commission orders:

(A) Pursuant to the authority contained in the Federal Power Act, and the Commission's Rules of Practice and Procedure, and of Executive Order No. 10485 dated September 3, 1953, a public hearing shall be held commencing at 10:00 a.m. (EST), March 15, 1965, in a hearing room of the Federal Power Commission, 441 G Street N.W., Washington, D.C. on the matters involved in and issues presented by the applications in Docket Nos. E-7206 and E-7207, which are hereby consolidated for the purposes of such hearing.

(B) Notices of intervention and petitions to intervene in this proceeding may be filed with the Federal Power Commission, Washington, D.C. 20426 on or before February 26, 1965, and in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.37).

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP65-87

ORDER AUTHORIZING EXPORTATION OF NATURAL GAS

(Issued February 4, 1965)

On September 30, 1964, Panhandle Eastern Pipe Line Company (Applicant) filed in Docket No. CP65-87 an application, as supplemented on December 24, 1964, pursuant to Section 3 of the Natural Gas Act for authorization to export natural gas from the United States to the Dominion of Canada in accordance with the terms of an agreement, dated April 21, 1954, as amended, between

Applicant and Union Gas Company of Canada, Limited (Union Gas) as further amended by an agreement, dated December 20, 1963, all as more fully set forth in the application, as supplemented, in this proceeding.

Pursuant to order issued in Docket No. G–612 on April 23, 1946, as amended by order issued on August 20, 1946, 5 FPC 472, 718, and by order in Docket No. G–619 issued on April 23, 1946, 5 FPC 476, and to a Presidential Permit issued in Docket No. G–611, Applicant was authorized to construct and operate facilities under the Detroit River to connect with Union Gas' facilities at the Canadian border and to export 5,500,000 Mcf of natural gas per year for sale and delivery to Union Gas during the months of April through October, in accordance with a contract between the parties, dated November 25, 1944. Deliveries under this latter contract are to terminate July 1, 1967.

Pursuant to an order issued in Docket No. G–2475 on June 30, 1956, 15 FPC 46, and an Amended Permit issued in Docket No. G–10798, Applicant was authorized to export up to 15,500,000 Mcf of natural gas per year for sale and delivery to Union Gas in accordance with the 1954 contract between the parties. The term of the 1954 contract extended to 1976 but said contract provided for termination, upon proper notice, if equivalent volumes of natural gas became available to Union Gas from Canadian sources. The latter contingency occurred and deliveries by Applicant ceased on October 27, 1959.

Applicant now seeks authorization to resume the exportation of natural gas for sale to Union in accordance with the terms of the 1954 contract, as amended by an agreement dated December 20, 1963. Pursuant to the 1954 contract, as amended on December 20, 1963, Applicant will deliver up to 15,500,000 Mcf of natural gas per calendar year. This volume is inclusive of the 5,500,000 Mcf per year available under the 1944 contract until July 1, 1967, the termination date of said contract. After termination of the 1944 contract, all of the 15,500,000 Mcf per year will be delivered in accordance with the 1954 contract, as amended December 20, 1963. No new facilities are required for the proposed service.

The existing and proposed services are as follows:

	Mcf at 14.73 psia		Total
	November to March	April to October	
Existing		5,500,000	5,500,000
Proposed	5,200,000	4,800,000	10,000,000
Total	5,200,000	10,300,000	15,500,000

The proposed and existing sales are interruptible or curtailable.

On September 30, 1964, Applicant filed an application in Docket No. G–10798 for further amendment of the Amended Permit issued June 3, 1957, in such docket.

Notice of the filing of the instant application was issued on November 2, 1964. This notice fixed November 30, 1964, as the last day for filing protests or petitions to intervene. Several petitions to intervene and a notice of intervention by the Michigan Public Service Commission were filed herein. None of said petitioners or the Michigan Commission requests a hearing in this proceeding. One of the petitioners, Trans-Canada Pipe Lines Limited, withdrew its petition to intervene; the remaining petitioners and the Michigan Commission support the subject application. Opportunity for hearing has been given by the issuance of said notice and the publication thereof in the Federal Register on November 7, 1964 (29 F.R. 15108).

The Commission finds:

The exportation of natural gas by Applicant, Panhandle Eastern Pipe Line Company, from the United States to Canada in accordance with the contract, dated April 21, 1954, as amended, between Applicant and Union Gas, as further amended by an agreement, dated December 20, 1963, will not be inconsistent with the public interest within the meaning of Section 3 of the Natural Gas Act provided that said exportation be continued on the terms and conditions hereinafter set forth:

(a) Applicant shall file statements or reports with the Commission from time to time under oath and in such details as the Commission may require with respect to the whole or any part of the instant export operation.

(b) The authorization granted herein is not transferable or assignable and shall remain in full force and effect only so long as Applicant continues the acts or operations herein authorized in accordance with the terms and conditions herein set forth.

(c) The authorization granted herein shall automatically terminate upon the termination or expiration of the 1954 contract, as amended December 20, 1963, attached as an exhibit to the application herein, and, upon the termination of said contract, as amended December 20, 1963, by discharge as a result of performance or completion, Applicant shall forthwith notify the Commission in writing of the fact and date of said termination.

(d) Applicant shall not, during the terms of the authorization granted by this order, materially change or alter its export operations without first obtaining the permission and approval of the Commission.

(e) In the event that Applicant should abandon or permanently cease for any reason whatsoever all or any part of the instant export operation prior to the termination date of the contract, as amended, described in (c) hereof, Applicant shall forthwith notify the Commission of said fact and the reason therefor.

(f) The maximum annual volume and maximum daily volumes exported for sale to Union Gas should not exceed 15,500,000 Mcf and 55,000 Mcf, respectively, under the instant authorization and the authorizations in Docket Nos. G–612 and G–619.

(g) The volumes of gas exported for sale to Union Gas during the period of November through March of each year should not exceed 5,200,000 Mcf.

(h) Applicant should advise the Commission when (during 1967) volumes of natural gas exported for sale to Union Gas in accordance with the contract of November 25, 1944, are terminated and become deliverable under the instant authorization.

(i) The export authorization hereinafter issued is granted on the express condition that the interruptible service authorized hereinafter shall be subject to any curtailment or interruption required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

The Commission orders:

(A) Authorization be and the same is hereby granted to Applicant to export natural gas from the United States to Canada in accordance with the contract, dated April 21, 1954, as amended, between Applicant and Union Gas, as further amended by an agreement, dated December 20, 1963, attached as an exhibit to the application herein, upon the conditions herein set forth and subject to the provisions of the Natural Gas Act and the Commission's regulations issued thereunder.

(B) The maximum annual volume and maximum daily volumes exported for sale to Union Gas shall not exceed 15,500,000 Mcf and 55,000 Mcf, respectively, under the instant authorization and the authorization in Docket Nos. G-612 and G-619.

(C) The volumes of gas exported for sale to Union Gas during the period of November through March of each year shall not exceed 5,200,000 Mcf.

(D) Applicant shall advise the Commission when (during 1967) volumes of natural gas exported for sale to Union Gas in accordance with the contract of November 25, 1944, are terminated and become deliverable under the instant authorization.

(E) This export authorization issued hereby is granted on the express condition that the interruptible service authorized herein shall be subject to any curtailment or interruption required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

(F) The related Amended Permit, as further amended, is released concurrently with the issuance of this order.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

ALABAMA ELECTRIC COOPERATIVE, INC. v. ALABAMA POWER COMPANY, DOCKET NO. E-7183

ORDER PROVIDING FOR HEARING AND DENYING MOTION TO DISMISS COMPLAINTS

(Issued February 5, 1965)*

This order directs a hearing on issues raised in two complaints filed by the Alabama Electric Cooperative, Inc., Andalusia, Alabama, against the Alabama Power Company, Birmingham, Alabama. One complaint was filed on September 23, 1964, and a second complaint, in the form of a supplement to the initial complaint, was filed November 17, 1964. Answers to the complaints and motions to dismiss were filed by Alabama Power Company on October 26, 1964 and November 27, 1964. Alabama Electric Cooperative on November 5, 1964, responded to Alabama Power Company's October 26, 1964 motion to dismiss. This order denies Alabama Power Company's motions to dismiss.

Alabama Electric Cooperative complains that Alabama Power Company's existing rates to the Cooperative for wholesale electric service are unlawful within the meaning of Sections 205 and 206 of the Federal Power Act, and that the Company's proposed rates (not yet on file with this Commission) for wholesale electric service to the Cities of Troy, Alabama, and Luverne, Alabama, are similarly unlawful.

Currently Alabama Electric Cooperative, a generating and transmission cooperative serving other cooperatively owned electric systems, municipally owned electric systems and industrial customers, secures a portion of its wholesale electric supply from Alabama Power Company under the latter's Rate Schedule FPC No. 24. The Cities of Troy and Luverne are currently served by Alabama Electric Cooperative but in the near future propose to secure electric service directly from Alabama Power Company. Service will be commenced on or about June 1, 1965. Alabama Electric Cooperative seeks an investigation and hearing prior to that date. Although not currently on file with this Commission, the pleadings herein indicate that the rate which Alabama Power Company proposes to serve Troy and Luverne is substantially the same as the rate under which the Company now supplies wholesale electric service to Alabama Electric Cooperative.

---

*See order denying rehearing, etc., issued March 19, 1965, 33 FPC 586.

Numerous underlying arguments concerning the proper basis upon which to ascertain the lawfulness of Alabama Power Company's rates to the Cooperative and to the two Cities, the jurisdiction of this Commission over the Company's wholesale electric service, the time within which the Company shall file its rate schedules for wholesale electric service to the Cities, and the appropriate terms and conditions for service by the Company to the Cooperative and the Cities make it necessary to direct a hearing on questions raised in the complaints and answers thereto, and to deny the motions to dismiss, without prejudice to their being renewed at the conclusion of the hearing. It has been contended that the complaints are premature. Under the circumstances presented here where firm contracts for such sales to commence at a fixed date are already in existence, a person who would be affected thereby need not await the date of filing to commence otherwise valid complaint proceedings.

The Commission further finds:

It is necessary and appropriate for the purposes of the Federal Power Act, particularly Sections 201, 202, 205, 206, 301, 306, 307, 308 and 309 thereof, that (1) a public hearing be held on the issues raised by Alabama Electric Cooperative's complaints and Alabama Power Company's answers thereto, except insofar as the latter seek a dismissal of those complaints; and (2) Alabama Power Company's motions to dismiss be denied.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by the Federal Power Act, and pursuant to the Commission's Rules of Practice and Procedure, a public hearing shall be held commencing at 10 a.m. (EST), March 16, 1965, in a hearing room of the Federal Power Commission, 441 G Street, NW., Washington, D.C., on the matters involved in and on the issues presented by the complaints filed by Alabama Electric Cooperative and the answers thereto filed by Alabama Power Company in the above-entitled proceeding.

(B) A prehearing conference shall be held before the presiding examiner commencing at 10 a.m. (EST), February 15, 1965, in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C., for purposes as specified in the Commission's Rules of Practice and Procedure.

(C) Alabama Power Company is hereby directed pursuant to the provisions of the Federal Power Act, particularly Sections 301, 306, 307, 308 and 309 thereof, to grant to the members of the staff of the Federal Power Commission during regular business hours free access to and opportunity to inspect and examine all facilities, properties, accounts, memoranda and other records of the Company when requested so to do for the purposes of the hearing ordered herein.

(D) Notices of intervention and petitions to intervene in this proceeding may be filed with the Federal Power Commission, Washington, D.C., 20426 on or before March 1, 1965, and in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.37).

(E) The motions filed by Alabama Power Company to dismiss the complaints filed by Alabama Electric Cooperative in the above-entitled proceeding are hereby denied.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

CITY OF BAINBRIDGE, GEORGIA, DOCKET NO. CP65-156

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES

(Issued February 5, 1965)

On November 25, 1964, the City of Bainbridge, Georgia (Applicant), filed in Docket No. CP65-156 an application pursuant to Section 7(a) of the Natural Gas Act for an order directing South Georgia Natural Gas Company (South Georgia) to establish another physical connection of its facilities with those of Bainbridge. There is now a physical connection between the Applicant's distribution facilities and South Georgia's transmission system and the sale of Applicant's gas requirements is now being made. However, Applicant states that it has contracted to make a sale to Southern Nitrogen Company, located in West Bainbridge, as an interruptible gas customer thus making it necessary and convenient to obtain a second delivery point to serve the new customer and to provide better service to Applicant's existing customers.

The cost to South Georgia is estimated at $110,217 for 4 miles of 6⅝-inch high-pressure line extending from the present delivery point to West Bainbridge.

Applicant proposes to construct 7,500 feet of 4½-inch intermediate-pressure line at an estimated cost of $32,820 in order to complete the interconnection of South Georgia's and Applicant's facilities.

On December 23, 1964, South Georgia filed an answer to Applicant's application wherein no objection to the requested order is raised. South Georgia agrees to make the connection requested.

Due notice of the filing of the application and opportunity for hearing thereon has been published in the Federal Register on December 11, 1964 (29 F.R. 17013). No protest, petition to intervene or notice of intervention in opposition to the granting of the application has been filed.

The Commission finds:

(1) South Georgia Natural Gas Company is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of September 2, 1954, in Docket No. G-1915 (13 FPC 666).

(2) Applicant, City of Bainbridge, is a municipality organized and existing under the laws of the State of Georgia and is authorized to sell and distribute natural gas to the inhabitants of said city. Applicant is now engaged in the business of buying natural gas from South Georgia and reselling it to the consumers in that city.

(3) It is necessary and desirable in the public interest that South Georgia Natural Gas Company construct and establish the physical connection of its facilities with the facilities of the Applicant at the point requested.

(4) The establishment of a second connection of facilities of South Georgia with the distribution system of Applicant will not place an additional burden upon it nor will it impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) South Georgia Natural Gas Company be and is hereby directed to establish and maintain the additional physical connection of its natural gas transmission system with the Applicant's distribution system at the point described in the application.

(B) Applicant shall be prepared to receive natural gas from South Georgia within six months from the date of issuance of this order through the proposed facilities to be constructed and operated by it.

(C) South Georgia shall report to the Commission in writing within ten days of the commencement of service to the Applicant by means of the new connection of facilities.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

CHIPPEWA AND FLAMBEAU IMPROVEMENT COMPANY

ORDER APPROVING HEADWATER BENEFITS ARRANGEMENT

(February 8, 1965)

By letters dated April 10, 1964, and September 11, 1964, the Chippewa and Flambeau Improvement Company (Company) requested approval of assessments for headwater benefits which it provided for the period July 1, 1963, through June 30, 1964.[1] Section 13.1 of the Regulations under the Federal Power Act provides for the filing of headwater benefit settlement arrangements in lieu of a headwater benefit determination under subsection 10(f) of the Federal Power Act (16 U.S.C. 803(f)).

The Company is owned by three utilities and two pulp and paper companies which operates some 15 hydroelectric plants receiving headwater benefits from the Company's four reservoirs.[2] These five corporations and their respective hydroelectric projects are listed below:

Corporation	*Hydroelectric Project*
Cornell Paperboard Products	Cornell Plant
Dairyland Power Cooperative	Flambeau Hydro
	Ladysmith Plant
	Thornapple Plant
	Port Arthur Plant
Kansas City Star Company	Upper Mill
	Lower Mill
	Pixley Rapids
	Crowley Rapids
Lake Superior District Power Company	Big Falls Plant
Northern States Power Company	Holcombe Plant
	Jim Falls Plant
	Wissota Plant
	Chippewa Falls Plant
	Dells Plant

These corporations make payment to the Company for headwater benefits according to the Laws of Wisconsin 1911, ch. 640, as amended, Laws of Wisconsin 1913, ch. 759, and Laws of Wisconsin 1921, ch. 339, which is the Company's enabling act.[3] The system presently used for apportioning tolls under this statute is according to a ratio determined by dividing each plant's average toll head by the total toll head of all the plants receiving benefits from the same headwater improvements. This method is substantially the same as the method described in detail in the Commission's order issued August 31, 1964, in *Wisconsin Valley Improvement Company*, Docket No. E-7178, 32 FPC 678.

---

[1] On April 6, 1964, 31 FPC 779, the Commission approved assessments for headwater benefits provided between June 10, 1920, when the Federal Water Power Act (Part I of the Federal Power Act since 1935) was approved, and June 30, 1963.

[2] Rest Lake, Moose Lake, Chippewa Reservoir, and Flambeau Reservoir. The Company leases the Chippewa Reservoir, Licensed Project No. 108, from Northern States Power Company.

Under this system, the owners of downstream plants for the period July 1, 1963, through June 30, 1964, were assessed as follows:

Cornell Paperboard Products	$14, 515. 06
Dairyland Power Cooperative	23, 241. 78
Kansas City Star Company	27, 125. 13
Lake Superior District Power Co	28, 322. 62
Northern States Power Co	187, 094. 47
Total	280, 299. 06

The Commission finds:

(1) The aforesaid assessments from July 1, 1963, through June 30, 1964, are reasonable compensation to the Chippewa and Flambeau Improvement Company for headwater benefits from its developments on the Chippewa and Flambeau Rivers.

The Commission orders:

The aforesaid assessments from July 1, 1963, to June 30, 1964, and future assessments similarly made are approved under section 13.1 of the Regulations under the Federal Power Act in lieu of the headwater benefit determination under subsection 10(f) of the Federal Power Act.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

EASTERN SHORE NATURAL GAS COMPANY, DOCKET NO. CP65-64

ORDER AMENDING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 8, 1965)

On December 18, 1964, Eastern Shore Natural Gas Company (Applicant), Salisbury, Maryland, filed in Docket No. CP65-64 an application to amend the order of the Commission issued in said docket November 23, 1964, 32 FPC 1352, which order authorized, among other things, the construction and operation of 30.25 miles of 4-inch and 6-inch pipeline from Bridgeville, Delaware to Cambridge, Maryland.

By the instant application to amend, Applicant seeks authorization to substitute 6-inch pipe in lieu of the presently authorized 4-inch pipe on an 8.47 mile segment of pipeline from East New Market, Maryland to Cambridge, Maryland which will obviate looping a segment of the authorized facilities upon the anticipated expansion of the natural gas market in Cambridge, Maryland.

The application states that the proposed substitution will result in a reduction in estimated construction costs from the originally estimated $351,900 to the presently estimated $347,239, a savings of $4,661.

---

[3] The pertinent section of this act as amended, is set out in the Commission's order of April 6, 1964, approving the settlement arrangement through June 30, 1963.

Due notice of the filing of the petition to amend and opportunity for hearing thereon has been given by publication in the Federal Register on December 29, 1964 (29 F.R. 18533). No protest or petition to intervene or request for hearing has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission order issued November 23, 1964, in Docket No. CP65–64 be amended as hereinafter ordered.

The Commission orders:

(A) The certificate of public convenience and necessity issued to Eastern Shore Natural Gas Company in the Commission order of November 23, 1964, in Docket No. CP65–64 be and the same is hereby amended so as to authorize the changes it requests as is more particularly described in the aforementioned application which is on file with the Commission.

(B) In all other respects the order in Docket No. CP65–64 shall remain in full force and effect.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

GEORGIA POWER COMPANY, DOCKET NOS. E–7099 AND E–7193

ORDER APPROVING SETTLEMENT OF CERTAIN ISSUES RELATIVE TO WHOLESALE SERVICE BY GEORGIA POWER COMPANY TO RURAL COOPERATIVES

(Issued February 8, 1965)

This order approves as being consistent with the public interest and in accordance with the relevant provisions of the Federal Power Act an offer of settlement which was submitted to the Presiding Examiner by counsel for Georgia Power Company (Georgia), and counsel for Georgia's cooperatively-owned wholesale electric customers. The Presiding Examiner on January 19, 1965, certified the proposed settlement to us for our consideration. A copy of the proposal (an agreement between Georgia and the Georgia Electric Membership Corporation[1]) is attached and made a part hereto as an Appendix.*

The proceedings in the above two dockets commenced with the issuance in Docket No. E–7099 of our order to show cause on May 27, 1963, 29 FPC 1049, as amended by order issued July 15, 1963, 30 FPC 197. As more fully appears from that order, we there referred to certain provisions in the wholesale rate schedules on file with the Commission as appearing to be "restrictive" and to as having "the effect of restricting the rural electric cooperatives and municipalities from reselling to certain classes of potential customers power purchased from Georgia Power under the filed rate schedules and contracts." We there were concerned both with contracts for the wholesale sale of power to Georgia's rural electric cooperative customers[2] and contracts for the wholesale sale of power to its municipally-owned wholesale customers.[3]

---

[1] A state-wide service organization of cooperatively-owned utilities in Georgia.

*Omitted in printing.

[2] The numerous cooperatively-owned wholesale customers of Georgia are identified in the Commission's Order to Show Cause issued May 27, 1963, Appendices A and B thereto.

[3] The numerous municipally-owned wholesale customers of Georgia are identified in the Commission's Order to Show Cause issued May 27, 1963, Appendix C thereto, the Commission's amendatory order issued July 15, 1963, Docket No. E–7099, and Order of Suspension and Hearing issued November 25, 1964, Docket No. E–7193.

On November 25, 1964, 32 FPC 1368, we issued an order in Docket No. E–7193 by which we, among other things suspended for one day two rate schedule submittals of Georgia, containing similar restrictions. Our order of November 25 directed a hearing on the lawfulness of the suspended rate schedules which provide for wholesale electric service to Cairo, Georgia, and consolidated for hearing purposes, that docket (No. E–7193), with the proceedings initiated by our earlier order, May 27, 1963, Docket No. E–7099. The consolidated hearing is set for February 15, 1965.

Since the initiation of this proceeding, various informal settlement conferences have been conducted among representatives of Georgia, its wholesale customers and Commission staff. A prehearing conference called by the Presiding Examiner was held on January 15, 1965. At that conference, the "Offer of Settlement of Issues Relative to Wholesale Service to Rural Cooperatives" was received by the Examiner, (Appendix). As more fully appears in the Appendix, the proposed settlement would:

(1) Withdraw rate schedule WR–2 which was referred to in the first paragraph of the Show Cause Order of May 27, 1963. WR–2 provides for a dual rate arrangement and increased rates applicable to electric utility service secured under WR–2 and used by purchasers thereunder to meet their larger electric utility loads.

(2) Withdraw the so-called "applicability" clause in rate schedule WR–5, which was quoted verbatim in the second paragraph of our order of May 27, 1963. This clause in effect restricted the right of Georgia's cooperatively-owned wholesale electric customers to purchase electric service from Georgia if those Cooperatives thereafter undertook to resell to customers having demand of 100 kw or more at rates lower than standard rates of Georgia for such service.

(3) Change the language of paragraph 11 of rate schedule WR–5, which was quoted verbatim in the Show Cause Order of May 27, 1963, by ameliorating some of its restrictions as contained therein.

(4) Change certain other provisions of rate schedule WR–5, which, although not referred to in our Show Cause Order, have been agreed upon by Georgia and its cooperatively-owned customers.

At the pre-trial conference, Georgia and the Cooperatives strongly supported acceptance of the modified rate schedules, under which Georgia would serve the Cooperatives as a final settlement of the proceedings insofar as sales to the Cooperatives are concerned. The Commission's staff, although concurring in the certification of the proposal to the Commission, expressed neither approval nor disapproval of its terms.

At the pre-trial conference, counsel for various municipally-owned wholesale customers of Georgia stated that his clients did not want to "obstruct any possible settlement that could be made" but expressed concern about the "possibility of some legal implication arising from this settlement agreement as to the issues which we will raise." (Tr. p. 43). Counsel for the City of Cairo, one of the intervenors herein, though not specifically objecting to the proposed settlement expressed even more clearly his concern that the settlement might in some way affect future findings of this Commission to load limitations. (Tr. pp. 45–46.) He stated: "we would strongly object to the approval of the settlement if by so doing the Federal Power Commission would feel that it was setting a precedent", (Tr. 46) in some way applicable to the City of Cairo.

We believe that as a settlement, agreeable to the parties to the power contracts, the proposal submitted by the respondent should be accepted. The provisions of the sales contracts as proposed are obviously less restrictive upon the operations of the cooperative purchasers than those which previously existed and we do not believe that immediate effectuation of these gains should be deferred. It is clear, however, that our agreement to the settlement proposal here cannot be taken as a necessary indication of the action we would have taken upon consideration of a full evidentiary record in the proceeding to say nothing of indicating any prejudgment as to whether the contract provisions we are here approving as a matter of settlement to govern the relations between the respondent and its cooperative customers would be appropriate as applied to respondent's other wholesale customers. Accordingly, it is to be understood that our approval of the settlement is without prejudice to any rights of any parties not participating in the settlement, is not a prejudgment of any issues remaining in these proceedings, and is not to be deemed in any way a precedent concerning our future disposition of the remaining issues after the development of a full record and a full hearing. Specifically, nothing herein should be taken as necessarily indicating that a wholesale power supplier may insist, as a condition of doing business, that a retail distributor wishing to purchase power from it must agree to restrict its otherwise lawful area of operations or forego certain types of load.

The Commission further finds:

It is in the public interest and necessary and appropriate for the purposes of the Federal Power Act that the Offer of Settlement (Appendix) be approved and that the issues settled thereby be severed from Docket Nos. E-7099 and E-7193 and as to such matters these proceedings be terminated.

The Commission orders:

(A) The Offer of Settlement as set forth in the Appendix is hereby approved.

(B) The issues thereby disposed of hereby are severed from these proceedings and the proceeding initiated by Commission Order to Show Cause issued May 27, 1963, Docket No. E-7099 is hereby terminated as respects the substantive provisions of Georgia's "WR-2" and "WR-5" rate schedules and cooperatively-owned wholesale customers enumerated in Appendices A and B of that order.

(C) A copy of this order and Appendix shall be deemed to constitute a part of Georgia's rate schedules as referred to in paragraph (B) above.

(D) This order is without prejudice to any findings or orders which have been or may hereafter be made by this Commission in any proceeding now pending, or hereafter instituted, by or against Georgia.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

CITY OF GRAND TOWER, ILLINOIS, DOCKET NO. CP65-168

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued February 8, 1965)

On December 11, 1964, the City of Grand Tower, Illinois (Applicant) filed in Docket No. CP65-168 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Natural Gas Pipeline Company of America (Natural) to establish a physical connection of its natural gas transportation facilities with the proposed facilities of the Applicant at a point within the city limits of Grand Tower and to sell and deliver natural gas to Applicant for distribution and resale in the City of Grand Tower, all as more fully set forth in the application.

Applicant's estimated peak day and annual gas requirements for the first three years of operations are as follows:

	First year	Second year	Third year
Peak day Mcf	207	286	362
Annual Mcf	18,890	25,050	31,230

Applicant proposes to construct a distribution system within its boundaries and a town border station at an estimated cost of $150,000.

On December 30, 1964, Natural filed an answer to the application herein stating that it has no objection to the issuance of the order requested by Applicant.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on December 29, 1964 (29 F.R. 18533). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 13, 1942, in Docket No. G–235 (3 FPC 830).

(2) Applicant, City of Grand Tower, is a municipality organized under the laws of the State of Illinois and is thereby duly authorized to construct and operate the gas distribution system proposed by it.

(3) It is necessary and desirable in the public interest that Natural be directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver up to 362 Mcf of natural gas per day to Applicant, as set forth in the application and as hereinafter ordered and conditioned.

(4) Applicant should be prepared to receive natural gas from Natural within one year from the date of issuance of this order.

(5) The requirement that Natural serve Applicant, as proposed, will not place any undue burden upon Natural nor impair its abilty to render adequate service to its existing customers.

The Commission orders:

(A) Natural Gas Pipeline Company of America be and it is hereby directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver up to 362 Mcf of natural gas per day to Applicant, all as hereinbefore described and as more fully set forth in the application.

(B) Applicant shall be prepared to receive natural gas from Natural within one year from the date of issuance of this order.

(C) Natural shall report to the Commission in writing the date of commencement of service to Applicant within ten days thereof.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP65-184

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 8, 1965)

On December 22, 1964, Natural Gas Pipeline Company of America (Applicant), 122 South Michigan Avenue, Chicago, Illinois, filed in Docket No. CP65-184 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of additional volumes of natural gas to an existing customer, all as more fully set forth in the application on file with the Commission.

Applicant proposes to sell and deliver an additional Daily Contract Quantity of 3,157 Mcf to Northern Indiana Public Service Company (Northern Indiana), to meet, in part, the request of an existing customer, Inland Steel Company, for an immediate increase in firm service.

The application states that the volume for which authorization is sought represents Applicant's remaining unallocated capacity. The application further states that no additional facilities will be required to render the proposed service.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on February 4, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 7, 1958, in Docket No. G-9966 (20 FPC 694).

(2) The proposed sale and delivery of natural gas by Applicant to Northern Indiana, as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed sale and delivery of natural gas is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (c)(3) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to the Applicant in this proceeding, authorizing the sale and delivery of natural gas to Northern Indiana, as more fully described in the application and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(3) and (e) of Section 157.20 of such Regulations.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP65–92

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 8, 1965)

On October 6, 1964, Northern Natural Gas Company (Applicant) filed pursuant to Section 7(c) of the Natural Gas Act an application, in Docket No. CP65–92 as supplemented on November 13, 1964, for a certificate of public convenience and necessity authorizing the construction and operation of facilities and the sale of natural gas, all as more fully set forth in the application on file with the Commission.

Applicant proposes to construct and operate facilities to enable it to deliver additional natural gas to Nebraska Natural Gas Company (Nebraska), consisting of (1) a total of approximately 13.7 miles of 24- and 30-inch pipelines, looping portions of Applicant's mainline near the Palmyra, Nebraska and Tescott, Kansas Stations respectively, and (2) necessary measuring and regulating facilities in Dodge County, Nebraska. This would increase Northern's system capacity by 4,600 Mcf per day.

Applicant seeks further authorization to sell the 4,600 Mcf of contract demand to Nebraska for resale to Fel-Tex, Inc., for use in the Fel-Tex plant to be located near Fremont, Dodge County, Nebraska.

The annual firm and interruptible sales to Fel-Tex in the third year of service are estimated to be 1,853,000 Mcf.

The estimated cost of Applicant's facilities is $1,241,200, and will be financed with cash on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on February 4, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G–280 (3 FPC 967).

(2) The proposed construction and operation of facilities and delivery of natural gas by Applicant to Nebraska as hereinbefore described, and as more fully described in the application and exhibits in this proceeding are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and delivery and sale of natural gas are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in Paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to the Applicant in this proceeding, authorizing the construction and operation of facilities and the transportation, delivery, and sale of natural gas to Nebraska as more fully described in the application and exhibits in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid regulations within 120 days of the date on which this order issues.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

PACIFIC GAS & ELECTRIC COMPANY AND NEVADA IRRIGATION DISTRICT

ORDER APPROVING HEADWATER BENEFITS SETTLEMENT

(Issued February 8, 1965)

Pacific Gas & Electric Company (Pacific) on April 2, 1964, requested approval of an agreement with the Nevada Irrigation District (Nevada) concerning compensation for headwater benefits by each party to the other on the Feather River and its tributaries the Yuba and Bear Rivers in California. The Commission, as provided in section 13.1 of the Regulations under the Federal Power Act, may approve such settlements in lieu of a headwater benefits determination under section 10(f) of the Federal Power Act (16 U.S.C. 803(f)).

The Commission recently authorized two projects in the Feather River basin by these parties. Pacific's Project No. 2310, an expansion of and addition to its earlier Project No. 889, consists of 22 reservoirs, three canals, seven power plants, 18 transmission lines, and various appurtenant works (29 FPC 1265). Nevada's Project No. 2266, a redevelopment of its earlier Project No. 338, includes nine reservoirs, several diversions and canals, and two proposed power plants (29 FPC 1256). Project works authorized by these two licenses are interspersed so that each licensee provides headwater benefits to the other.

Pacific and Nevada entered into two contracts concerning the operation of these developments in the Feather River basin. The so-called Revised Contract, dated June 7, 1943, covering the developments under the earlier licenses, stated at page 34:

> It is mutually agreed (1) that the divers figures used herein relating (a) to prices for water delivered at Lake Spaulding hereunder or purchases by District [Nevada] from Pacific at Lake Spaulding or at other designated places, (b) to the respective quantities of water deliverable to Pacific by District or by Pacific to District, and (c) to and used in the various formulae herein set out, and (2) that the agreed transmission losses in District water from Lake Spaulding and Bear River headdam to the respective points of redelivery thereof to District, were arrived at by Pacific and District after full and informed consideration by their respective representatives, both severally and in divers mutual conferences, of all factors involved and that said figures are reasonably correct and shall conclusively control in all respects in the performance by them of the provisions hereof irrespective of any measures either party shall hereafter take in improving its facilities, and shall not during the term hereof be changed or modified by any court or arbitration board. Any such figure or figures shall be changed only with the mutual written agreement of the parties.

The so-called Consolidated Contract, dated July 12, 1963, covering the developments under the present licenses states at page 3:

> The parties specifically understand and agree that in their negotiations they have taken into full account the provisions of Section 10(f) of the Federal Power Act relating to upstream benefits. They agree that such benefits are of the essence of this agreement and that the considerations forming a part of this agreement take into full account and include both those upstream benefits to be provided by Nevada to Pacific, and those upstream benefits to be provided by Pacific to Nevada, and that neither party during the term of this Part I is entitled to any further consideration with respect to such benefits. In the event that, by reason of any requirement of the Federal Power Commission or other governmental authority having jurisdiction so to do, either party hereto is required to pay headwater benefits to the other by reason of such facilities, the amounts to be paid by Pacific to Nevada hereunder shall be reduced by the amount of any such headwater benefit payment made to Nevada or increased by the amount of any such headwater benefit payment received from Nevada.

Since each party by these contracts relinquished rights to payments for headwater benefits to obtain other valuable rights, the agreements are contracts concerning headwater benefits compensation which may be filed by the parties under Section 13.1 of the Regulations under the Federal Power Act.

The Commission finds:

The agreements dated June 7, 1943, and July 12, 1963, by the Pacific Gas & Electric Company and the Nevada Irrigation District constitute an effective and reasonable method for compensating Pacific for benefits received from Nevada's Project No. 2266 and its predecessor Project No. 338 and for compensating Nevada for benefits received from Pacific's Project No. 2310 and its predecessor Project No. 889.

The Commission orders:

The aforesaid agreements are approved with respect to settlement of headwater benefits under Section 13.1 of the Regulations under the Federal Power Act in lieu of a headwater benefit determination under Section 10(f) of the Federal Power Act until a further order of the Commission may be required due to changes in conditions.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP61-123

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 8, 1965)

On October 24, 1960, Texas Gas Transmission Corporation (Applicant) filed in Docket No. CP61-123 an application, as supplemented and amended on January 4, March 15 and August 31, 1961, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain new facilities and the operation of certain existing facilities in order to sell and deliver an additional 50.154 Mcf of natural gas per day to 42 existing customers, all as more fully set forth in the application, as supplemented and amended, in this proceeding.

Specifically, Applicant proposes to construct and operate the following facilities:

(1) Approximately 61.32 miles of 30-inch loop lines in Louisiana, Arkansas, Mississippi, Tennessee and Kentucky;

(2) Approximately 25.95 miles of 26-inch loop line in Kentucky and Louisiana;

(3) Approximately 8.28 miles of 6-inch loop line in Indiana;

(4) Approximately 22.4 miles of 20-inch and approximately 10.3 miles of 16-inch lateral supply pipeline in south Louisiana;

(5) Approximately 17.4 miles of 8-inch lateral supply pipeline in south Louisiana;

(6) One additional 2,000 horsepower compressor engine at the existing Lafayette, Louisiana, Compressor Station;

(7) An additional 2,000 horsepower compressor engine and other facilities to expand the existing West Greenville, Kentucky, Storage Field, and

(8) Five purchase meter stations in south Louisiana and one measuring station in Indiana.

Additionally, Applicant proposes to operate in interstate commerce the following existing facilities:

(1) Approximately 22.33 miles of 4- to 10-inch lateral supply pipelines in south Louisiana, and

(2) Five purchase meter stations in south Louisiana.

Applicant states that the subject proposal is for the purpose of assisting its existing customers to meet their estimated increased natural gas requirements.

The application, as amended and supplemented, shows the total estimated cost of the subject facilities to be $17,274,000, which cost will be financed by the issuance and sale of First Mortgage Pipeline Bonds and Common Stock.

By letters dated July 7 and October 6, 1961, Applicant was issued temporary certificates for the proposed facilities and service.

On December 1, 1960, Memphis Light, Gas & Water Division filed herein a petition to intervene and on December 20, 1960, the City of Memphis, Tennessee, filed a notice of intervention in this proceeding. Neither petitioner states objection to the issuance of the requested certificate nor to the disposition of this proceeding under the shortened procedure provided for by the Commission's Rules. Inasmuch as the shortened procedure is being used herein, no further action on said petition and notice appears necessary.

After due notice issued December 7, 1964, and published in the Federal Register on December 12, 1964 (29 F.R. 17055), no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on February 4, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, as amended and supplemented, and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Texas Gas Transmission Corporation, a Delaware corporation having its principal place of business in Owensboro, Kentucky, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 30, 1949, in Docket No. G-859 (8 FPC 190).

(2) The facilities hereinbefore described, as more fully described in the application, as amended and supplemented, in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation of the proposed facilities, the operation of certain existing facilities and the proposed transportation and sales of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities, the operation of certain existing facilities and the proposed transportation and sales of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Texas Gas Transmission Corporation, to construct and operate the proposed facilities, to operate certain existing facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(4) and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

AREA RATE PROCEEDING, ET AL. (PERMIAN BASIN AREA), DOCKET NO. AR61-1, ET AL.

ORDER DENYING MOTION FOR RECONSIDERATION

(Issued February 9, 1965)

Phillips Petroleum Company (Phillips) on February 4, 1965, tendered an application for rehearing of the Commission's memorandum opinion and order rejecting a motion to disqualify Vice Chairman David S. Black from further participation in this proceeding (Opinion No. 447 issued January 12, 1965, 33 FPC 43).[1]

An application for rehearing of an interlocutory order, such as involved here, may not properly be filed [Section 1.30(e) of the Rules of Practice and Procedure (18 CFR 1.30(e))]. We have decided to treat Phillips' document as a motion for reconsideration.

Phillips' motion for reconsideration presents no new facts or principles of law which were not fully considered by the Commission in Opinion No. 447, or which, having now been considered, warrant any modification of that decision.

The Commission orders:

The motion for reconsideration filed herein by Phillips on February 4, 1965, is hereby denied.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP65-162

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT

(Issued February 9, 1965)

On December 7, 1964, Cities Service Gas Company (Applicant) filed in Docket No. CP65-162 an application pursuant to subsections (b) and (c) of Section 7 of the Natural Gas Act for permission and approval to abandon certain facilities in its transmission system serving the Kansas City, Missouri area, by removing and replacing some facilities and for authority to construct and operate certain other facilities to implement operations, as hereinafter described, all as more fully described in the application.

The facilities proposed to be constructed are for the following purposes: (1) provide for new delivery facilities into the Kansas City Market area and to maintain balance delivery patterns to its distribution company customers in that area; (2) maintain system inputs into Applicant's transmission system and ratable takes from producing areas connected to its system by offsetting declining well-head pressures; (3) increase the deliverability of its transmission system by more fully utilizing existing compressor facilities; (4) and replace facilities which have become physically deteriorated to the extent replacement thereof is deemed necessary. More specifically, Applicant proposes to:

---

[1] A number of other producers have tendered a joinder in the application for rehearing tendered by Phillips.

(1) Construct approximately 25 miles of 26-inch pipeline and approximately one mile of 16-inch pipeline between Applicant's Tonganoxie Compressor Station and The Gas Service Company's distribution systems in the North Kansas City area, together with two new sales metering stations and appurtenant regulator facilities; replace approximately 9.7 miles of Applicant's existing Ottawa-St. Joseph 16-inch pipeline with a 26-inch pipeline between Lawrence, Kansas, and Applicant's Tonganoxie Compressor Station; construct approximately 0.6 miles of 20-inch pipeline as a tieover pipeline between Applicant's Topeka and North Topeka 16-inch pipeline, all at an estimated cost of $3,044,000.

(2) Reclaim one 2,000 horsepower compressor unit from Applicant's Marion Compressor Station and install this unit at its American Compressor Station, at an estimated cost of $480,000.

(3) Construct approximately 1.45 miles of 8-inch pipeline to serve the City of Humboldt, Kansas; reclaim 1.68 miles of deteriorated 8-inch line now used to serve Humboldt; and replace 0.96 miles of Applicant's existing 5½-inch Humboldt lateral line with 8-inch line and regulator setting, at an estimated cost of $79,000.

(4) Loop approximately 8 miles of Applicant's Hugoton Compressor Station 30-inch intake pipeline with 26-inch pipeline, at an estimated cost of $500,000.

(5) Reclaim two 1,000 horsepower compressor units from Applicant's Pampa Compressor Station and install these units together with two new 2,000 horsepower units at a new 6,000 horsepower compressor station (to be called Burnett Compressor Station); and install 230 additional horsepower at each of Applicant's White Deer and Hughey Field booster stations, at an estimated cost of $1,700,000.

The total construction cost of the proposed facilities amounts to $5,803,000. The cost of facilities to be reclaimed amounts to $72,000 with a salvage value of $466,000. The adjusted total cost of the proposed projects is estimated at $5,409,000.

The cost of the proposed facilities will be paid for out of funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on February 4, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorizations sought, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G–298 (4 FPC 471).

(2) The facilities proposed to be abandoned by removal, as hereinbefore described in the application herein, are used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and approval therefor should be granted as hereinafter ordered.

(4) The facilities proposed to be constructed and operated, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the installation and operation thereof and the transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) Applicant is able and willing properly to do the act and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(6) The construction and operation of the proposed facilities and the proposed sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(7) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) Permission for and approval of the abandonment of the facilities hereinbefore described, as more fully described in the application filed in this proceeding, be and the same are hereby granted to Applicant.

(B) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Cities Service Gas Company, to install and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(D) The facilities hereby authorized shall be completed and placed in operation not later than one year from the date of this order, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations aforesaid.

(E) Permission for and approval of the abandonment by Applicant of the segments of pipeline facilities hereinbefore described and as more fully described in the application, in this proceeding, be and the same are hereby granted.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black

VIRGINIA ELECTRIC & POWER COMPANY, DOCKET NO. E-6684

ORDER DENYING REHEARING AND STAY UPON AN INTERIM DETERMINATION AND BILLING AND FIXING HEARING ON TOTAL AMOUNT OF HEADWATER BENEFITS FOR PERIOD

(Issued February 11, 1965)

On January 12, 1965, Virginia Electric & Power Company, licensee for the Roanoke Rapids hydroelectric development, Project No. 2009, on the Roanoke River (N.C.-Va.), filed an application for rehearing and stay of the interim determination and billing, issued by the Commission on December 21, 1964, 32

FPC 1494, in the amount of $559,990 for certain energy gains from headwater benefits provided to the Roanoke Rapids project from August 1, 1955, through December 31, 1962, by the upstream United States' Philpott and John H. Kerr developments.

The billing expressly reserved the right to supplement the bill upon the Commission's final determination of the total amount of headwater benefits payments for the period August 1, 1955 through December 31, 1962. The billing included an additional amount of $33,900 for the cost to the United States through April 10, 1964, of making a headwater benefit determination pursuant to section 10(f) of the Federal Power Act (16 U.S.C. 803(f)).

The proceedings in this docket were instituted on May 28, 1956, with an order directing a headwater benefits investigation in the Roanoke River basin (15 FPC 1470). Pursuant to this order, the staff prepared a proposed report, dated January 1962, recommending payments from August 1, 1955, when the first headwater benefits were found to have been provided to the licensee's development, through 1957. This report was served for comment upon the licensee, Department of the Interior, and Army Corps of Engineers. The staff's second proposed report, dated April 1964, incorporating certain suggestions made by these parties in response to the earlier report, recommended payment of $983,300 as the portion of the annual costs of interest, maintenance, and depreciation on the Kerr and Philpott headwater improvements to be paid by the licensee for energy gains at the Roanoke Rapids Plant from headwater benefits provided by Kerr and Philpott for the period August 1, 1955, through December 31, 1962, and $33,900 for the costs of the determination through April 10, 1964, a total of $1,017,200. This report also was served for comment upon the above designated parties.

The Corps of Engineers, responding to the staff's second proposed report by letters of August 18, 1964, and October 15, 1964, did not propose any significant change in the staff's recommendations.[1] The Secretary of the Interior by letter of July 28, 1964, stated that the United States headwater improvements provided not only the energy gains which were the basis of the staff's recommended payments, but also capacity gains whose value to the licensee was estimated by the Department of the Interior at $1,125,000 annually.

In its letter of July 27, 1964, licensee made two legal arguments with respect to the April 1964 staff report. First, the licensee contended that the staff should have allowed an offset for reregulation benefits provided by licensee's downstream Roanoke Rapids project. Secondly, the licensee contended that aside from the matter of such offset "an equitable solution would be attained" within the meaning of Section 10(f) if the licensee's charges "were determined at one-half the value of the net benefits received" at its downstream plant, plus the cost of making such determination. Licensee conceded that if these two arguments are invalid, it owed to the United States at least $559,990. No questions were raised regarding the accuracy of the amount of $33,900 as cost to the United States through April 10, 1964 in making the headwater benefit determination. The Commission's billing upon an interim determination was for the amount of $559,990, plus the cost of determination. In its application for rehearing licensee has repeated the two aforesaid legal arguments made in its letter on July 27, 1964, and contends that the Commission was without authority to make the interim determination and billing of December 21, 1964, and provide delinquency penalties for non-payment within 60 days pursuant to Section 17(b) of the Federal Power Act and Section 11.31 of the Commission's Regulations thereunder (18 CFR 11.31). In addition, the licensee requests a stay on the interim billing and penalties and that a hearing be granted on its assessment for the period.

---

[1] The Kerr and Philpott projects are operated by the Corps of Engineers and power from these projects is marketed by the Secretary of the Interior.

The methods used by the staff in its April 1964 report with respect to the part of the annual costs of interest, maintenance, and depreciation of the Kerr and Philpott headwater improvements to be paid by the licensee for the Roanoke Rapids project for energy gains are basically the same as those used by the Commission with respect to the Stevens Creek project of South Carolina Electric & Gas Company. Since the licensee concedes that the staff has met its burden of showing that licensee owes the United States at least $559,990 if its two aforesaid legal arguments are invalid, there is no necessity for hearing as to this amount, and the administrative record presently before the Commission provides an adequate basis for determining that this much is due and payable to the United States now, regardless of whether any additional amounts may also be payable.

The question of any offset for reregulation benefits provided by the downstream plant was involved and disallowed by the Commission's order issued March 28, 1963, concerning the Stevens Creek project of *South Carolina Electric & Gas Company* (29 FPC 624). Licensee was permitted to file briefs *amicus curiae* in the United States Court of Appeals for the Fourth Circuit on review of the Commission's order concerning the Stevens Creek project. The Court affirmed the Commission order disallowing the offset claim for reregulation by the downstream Stevens Creek project (*South Carolina Electric & Gas Co.* v. *F.P.C.*, 338 F. 2d 898, 903).

The licensee's alternative "equitable" argument is equally invalid. As the Court made clear in the *South Carolina Electric & Gas* case, *supra*, the language in Section 10(f) directing the Commission to order reimbursement by a licensee "for such part of the annual charges for interest, maintenance, and depreciation [on the upstream project of the United States] as the Commission may deem equitable" does not authorize the Commission to assess annual charges on an equitable allocation of the "value of the net benefits received downstream" between the United States and the licensee. Instead, the Court made clear the statutory language "means only that the proportion of such annual charges of [the upstream Federal project] and the rateable share thereof assignable to [the licensee] shall be determined equitably" (*ibid*). The measure of charges for the benefits provided to a licensed downstream plant is based on such part of the annual charges for interest, maintenance, and depreciation on the headwater improvement as the Commission may deem equitable, not some lesser or greater amount as the Commission might determine would be equitable based on some other factors extrinsic to the statutory 10(f) standard.

The licensee argues that we have no authority to make an interim order directing it to pay to the United States the amount of headwater benefits concerning which there is no factual dispute between it and the Commission pending determination of the full amount of such benefits due. In its view, until the entire matter is resolved after the extensive period of hearing necessary to make the factual findings on the matters remaining in dispute, the licensee is entitled to withhold, without any subsequent claim for interest, all of the amounts due to the United States including those which it admits would be due if its legal arguments are invalid. We think any such claim is patently unsound. The Commission's authority under Section 309 of the Act to "perform any and all acts and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of the Act" are obviously broad enough to permit it to divide the determinative process required by Section 10(f) of the Act whenever public interest so requires.

See *Federal Power Commission* v. *Tennessee Gas Transmission Company,* 371 U.S. 145; *Cf. Public Service Commission of New York* v. *F.P.C.,* 327 F. 2d 893, 895–897 (CADC). As the Supreme Court said in the *Tennessee* case, *supra,* at pp. 154–155, in approving an analogous interim order procedure under the Natural Gas Act:

> It is, therefore, the duty of the Commission to look at 'the backdrop of the practical consequences [resulting] . . . and the purposes of the Act,' *Sunray Mid-Continent Oil Co.* v. *Federal Power Comm'n,* 364 U.S. 137, 147 (1960), in exercising its discretion under § 16 to issue interim orders and, where refunds are found due, to direct their payment at the earliest possible moment consistent with due process. In so doing under the circumstances here the Commission's ultimate action in directing the severance and in entering the interim order was not only entirely appropriate but in the best tradition of effective administrative practice.

What is appropriate in our administration of the Gas Act to protect ultimate consumers is no less valid here where the protection of the rights of the United States itself are involved.

Accordingly, the motion for rehearing will be denied. Moreover, since we think that the *South Carolina Electric & Gas Co.* case, *supra,* clearly demonstrates the invalidity of licensee's legal arguments, we shall deny the request for stay of our interim determination and billing.

A public hearing will be set by notice of the Secretary of the Commission concerning the total assessments under Section 10(f) of the Federal Power Act for headwater benefits provided to licensee's Roanoke Rapids development by the Kerr and Philpott developments through December 31, 1962. The hearing shall include *inter alia,* the questions of the total energy and capacity gains for the period and the costs to the United States through the close of the hearing in making the determination. At such hearing, the licensee will have full opportunity to show why it believes no further amounts asserted by the staff or the Department of the Interior are due.

As indicated above, the interests of the Secretary of the Interior in the Kerr and Philpott developments are such that he will be expected to present evidence and otherwise participate in support of his position in this proceeding.

The Commission finds:

(1) It is appropriate and in the public interest that the aforesaid application for rehearing and stay of the interim determination and billing be denied.

(2) A public hearing on a total assessment under Section 10(f) of the Act for headwater benefits through December 31, 1962, in Docket No. E–6684 should be held, as hereinafter provided.

The Commission orders:

(A) The aforesaid applications by Virginia Electric & Power Company for rehearing and stay of the Commission's interim determination and billing, issued December 21, 1964, in Docket No. E–6684, are denied.

(B) A public hearing will be held, at a time and place to be fixed by notice of the Secretary of the Commission, respecting the question raised and the issues presented in Docket No. E–6684 concerning total assessments under Section 10(f) of the Federal Power Act for headwater benefits provided to the Roanoke Rapids development of Virginia Electric & Power Company by the John H. Kerr and Philpott reservoirs of the United States during the period August 1, 1955, through December 31, 1962, and the costs to the United States of the determination of such assessments.

Commissioner Ross *dissenting.*

Ross, *Commissioner dissenting:*

While I commend the majority in its laudatory purpose of seeking to achieve additional revenues for the Federal Government at the earliest possible moment, I do not believe that the rights of the parties should be compromised. It should be pointed out that the interim order procedure adopted in the *Tennessee* case, *supra*, involved a contested hearing involving rate of return. There was notice of the issue to be tried and an opportunity to be heard on the record. Here, on the other hand, there is no such record and the licensee at no time was aware of the far reaching consequences in replying to a staff report.

Furthermore, I do not believe that interim order billing advocated in this matter will continue to be productive. I assume in the future, that licensees will refrain from such concessions in advance of a scheduled hearing in order to protect their rights and bargaining position.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

AREA RATE PROCEEDING, ET AL. (PERMIAN BASIN AREA), DOCKET NO. AR61-1, ET AL.

ORDER DENYING STAY

(Issued February 12, 1965)

On February 11, 1965, Phillips Petroleum Company filed a motion requesting stay of further Commission consideration or deliberation on the issues in this proceeding pending judicial review of Opinion No. 447, 33 FPC 43. In Opinion No. 447, we carefully considered and rejected a motion to disqualify Commissioner David S. Black from participation in this proceeding as without merit. On February 9, 1965, *supra*, p. 198, we denied reconsideration of this interlocutory order. Phillips states that it intends promptly to file a petition for review of Opinion No. 447 and moves that the Commission stay any action leading toward the formulation and issuance of a Commission decision herein pending such judicial review.

Oral argument in these proceedings was heard before the Commission, Commissioner Black participating, on February 8, 9, and 10, 1965, and the case is now ripe for our decision. We remain convinced that Commissioner Black is properly participating in this proceeding and that stay of our further deliberations pending an attempt to secure review of our interlocutory ruling would be contrary to the public interest.

The motion for stay is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

THE JUPITER CORPORATION, DOCKET NO. RI63-212; TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP65-58

ORDER DENYING MOTION FOR CONTINUANCE

(Issued February 12, 1965)

On February 8, 1965, The Jupiter Corporation (Jupiter) filed its fourth motion for continuance in Docket No. RI63-212 in which it requests the Commission to continue all procedural dates in these proceedings, including the date for the service of Jupiter's evidence herein, until after the Commission has ruled upon the merits of the petitions and motions previously filed by Jupiter and now pending before the Commission. These dates for the service of evidence by the Commission Staff, Tennessee Gas Transmission Company (Tennessee), Jupiter and the interveners, and for prehearing conference, set by the Commission's order issued October 30, 1964, have already been extended four times for a combined period of eight weeks. These extensions were granted upon a motion for continuance filed by Tennessee and three such motions filed by Jupiter.

The Staff and Tennessee served their direct evidence on December 8, 1964. By order issued February 3, 1965, granting Jupiter's third motion for continuance, we directed Jupiter to serve its evidence upon all parties on or before February 15, 1965 and indicated that, in view of the several continuances previously granted, we did not expect to grant any extension beyond that date irrespective of whether there are motions or petitions pending before us at that time. In its motion filed February 8, 1965, Jupiter indicates that it has not begun to prepare its evidence in these proceedings because of the substantial expense in terms of time, effort and money which such preparation entails and its conviction that such preparation will not be necessary in view of its expected rulings on its petitions and motions by this Commission and/or the Courts.

By order issued December 5, 1962, 28 FPC 942, in Docket No. RI63-212, the Commission instituted an investigation under Section 5(a) of the Natural Gas Act into the rates and charges of Jupiter for the transportation of natural gas subject to the jurisdiction of the Commission. That investigation was directed in particular to Jupiter's rates for the transportation of gas in interstate commerce in the Rollover Field, offshore South Louisiana. Jupiter performs a transportation service for Pure Oil Company (Pure) by transporting gas sold by Pure to Tennessee from Pure's offshore platform in the Rollover Field to Tennessee's line onshore. Jupiter purchases gas from Phillips-Kerr McGee[1] in the Rollover Field and transports it onshore where it sells it to Tennessee. The difference in the price Tennessee pays Jupiter and the price Jupiter pays Phillips-Kerr McGee is in effect a transportation charge. In both cases the gas is transported through Jupiter's underwater pipelines and Jupiter separates the condensates from the gas at its plant onshore.

Following issuance of the Commission's order of December 5, 1962, our Staff contacted Jupiter's representatives for the purpose of making the necessary arrangements for a review of Jupiter's books by the Staff. After a series of protracted delays on its part, Jupiter furnished Staff with required data on May 22, 1963. In the fall of 1963 Staff completed a cost of service for Jupiter's transportation operations in the Rollover Field. Following a series of informal conferences between representatives of Jupiter and the Staff, Jupiter indicated that it intended to submit a settlement proposal in July, 1964. No such proposal was made.

On August 28, 1964, Tennessee filed with the Commission pursuant to Section 7 of the Act an application, docketed CP65-58, for a certificate of public convenience and necessity which would authorize it to lease and operate Jupiter's transportation facilities in the Rollover Field. By order issued October 30, 1964, [unreported] we consolidated Docket No. CP65-58 with Docket No. RI63-212 and provided for the serving of evidence and prehearing conference as stated above. In that order (p. 2) we stated our reasons for consolidation:

> In determining whether the issuance of a certificate to Tennessee in Docket No. CP65-58 is in the public interest, one of our basic considerations is to determine whether the proposed lease arrangement would operate in a

---

[1] Phillips Petroleum Corporation and Kerr McGee Oil Industries, Inc.

> way which would have an adverse effect on consumers. Such determination involves a comparison of the proposed annual rental fee under the lease agreement with Tennessee's purchased gas costs and can be properly made only after the Commission's determination of a just and reasonable transportation rate for Jupiter in Docket No. RI63-212. Since our decision as to whether the issuance of a certificate to Tennessee is in the public interest depends to a great extent upon our determination of a lawful rate in Jupiter's rate proceeding, it is appropriate that the two cases be tried upon a consolidated hearing record, as hereinafter ordered.

The consolidation order also constituted public notice of the certificate application filed by Tennessee.

Intervention in these consolidated proceedings was granted to Long Island Lighting Company (Long Island), Public Service Electric and Gas Company and Phillips-Kerr McGee. The Pennsylvania Public Utility Commission also filed notice of intervention herein. The Brooklyn Union Gas Company is an intervener in Docket No. RI63-212 only.

On November 12, 1964, Tennessee filed a motion to extend the time for serving its evidence from November 23, 1964 to December 21, 1964. By Notice of the Secretary dated November 20, 1964, upon consideration of Tennessee's motion, the time for service of Tennessee's and Staff's evidence was extended to December 8, 1964, and for Jupiter to January 7, 1965. Other dates were extended for a commensurate period. Staff and Tennessee filed their evidence in Docket Nos. RI63-212 and CP65-58, respectively on December 8, 1964. On December 16, 1964, Jupiter filed a motion to terminate these proceedings and a motion for extension of filing dates in which it requested that the time for serving its evidence be extended from January 7, 1965, to February 15, 1965, in order to give the Commission time to consider its motion to terminate and to give Jupiter time thereafter to take such steps as are requisite. By Notice of the Secretary dated December 29, 1964, upon consideration of Jupiter's motion the time for service of Jupiter's evidence was extended to January 21, 1965, and other dates were extended commensurately.

On January 8, 1965, Jupiter filed a second motion for continuance requesting that the date for serving its evidence be continued until the Commission has ruled upon its motion to terminate, and three new pleadings filed simultaneously therewith: A Petition for Declaratory Order and Motion to Dismiss Proceedings in Docket No. RI63-212, an Alternative Motion to Sever and to Stay Proceedings, and a Motion for Oral Agrument on these and its Motion to Terminate. By Notice of the Secretary dated January 18, 1965, Jupiter's date for service of its evidence was extended from January 21, 1965 to February 4, 1965 and other dates were again extended commensurately. On that same date, the Commission issued an order denying Jupiter's motion to terminate the proceedings.

In its third motion for continuance filed January 26, 1965, Jupiter requested that the procedural dates be further continued until the Commission had ruled on Jupiter's pending petition and alternative motion, upon a petition for rehearing of the Commission's January 18, 1965, 33 FPC 82, order denying Jupiter's motion to terminate and upon the pending certificate matters in *Union Texas Petroleum*, Docket No. G-13221, *et al.* As indicated, *supra*, we denied this general continuance by our order of February 3, 1965, but gave Jupiter a brief further extension to complete its evidence.

In support of its fourth and latest motion for continuance, Jupiter contends that its pending filings should be ruled upon at such time as to allow the Commission to harmonize such rulings with its decision on reserved Rollover Field issues raised in *Union Texas Petroleum, et al.*, Docket No. G-13221, *et al.*, on which oral argument is scheduled for February 26, 1965. Jupiter also contends, as it has in previous filings, that before the Commission can decide either the Union Texas Petroleum reserved issue or Docket No. RI63–212 it must resolve the issue as to whether Commission's guideline, in-line and area prices apply to the interstate pipeline onshore or to gas sales by producers offshore. It is Jupiter's position that the level of its charges is irrelevant to the price to be paid by Tennessee and that any reduction in Jupiter's rates will produce a corresponding increase for the producers and will not reduce Tennessee's costs or costs to consumers. Jupiter contends that the Commission has not been fully advised as to the "public interest" and "protection of gas consumer" factors in these proceedings (presumably a reference to matters contained in its pending motions or the other proceedings it believes should be decided first) and expresses a clear unwillingness to even start to prepare its case in the 5(a) proceeding until these matters have been fully considered by the Commission and the Courts.

We have fully considered Jupiter's arguments contained in its motion for continuance filed February 8, 1965, and conclude that they do not justify further extension of time for Jupiter to serve its evidence in Docket No. RI63–212.

Jupiter argues that it should not be required to expend time, effort and money in presenting evidence in RI63–212, because it is convinced that such presentation will not be necessary when the Commission "and/or the Courts" have ruled on the merits of its petitions and motions. By separate order, *infra*, p. 213, we have denied Jupiter's application for rehearing of our denial of its motion to terminate these proceedings. Further, other than the motion for continuance herein involved, there remain for our consideration Jupiter's "Petition for Declaratory Order and Motion to Dismiss Proceedings in Docket No. RI63–212" and "Alternative Motion to Sever and Stay Proceedings". We are not passing on the merits of those filings at this time. However, it should be noted that the petition for declaratory order which challenges our jurisdiction over Jupiter was filed more than two years after institution of the proceedings in RI63–212. The motion to sever urges that these consolidated proceedings now be heard separately and that we proceed first with Tennessee's certificate application. That motion is in fact no more than an untimely application for rehearing and reconsideration filed more than two months after issuance of our order consolidating the proceedings. Jupiter's contention that because of the pendency of the aforementioned belated petition and motion it should not be required to expend time, money and effort in preparing and presenting its evidence is more than outweighed by the detriment to consumers resulting from the numerous delays in bringing the rate investigation to a posture of deciding whether the rates and charges involved are unjust and unreasonable.

Jupiter also contends that the public interest is not aided and gas consumers will not receive any benefit if it is determined that Jupiter's rates should be reduced because Tennessee is under no present obligation to pass on such reduction in rates. Jupiter's narrow construction of possible benefit to consumers is without merit. We are not without authority under the Natural Gas Act to give effect in Tennessee's rates, if warranted, to reductions in its cost of service. Moreover, if such reductions in cost do not warrant an immediate reduction in Tennessee's rates it is quite likely that they aid in preventing filing of increases in rates. Our duty under the statute lies in determining just and reasonable rates for each natural gas company at such time as it appears that the rates of such company may be unlawful.

Jupiter also seeks to inject into these proceedings the issue of "guideline" "in-line" and "area" prices and a further contention that any ruling on its filings herein must be "harmonized" with any decision the Commission may reach in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.* The relevancy of these contentions, if any, to the investigation and determination of Jupiter's transportation rates may be appropriate matters Jupiter would seek to introduce as part of its evidence or matters which they would brief after hearing, but in our view do not justify further delay of these proceedings. Whether Jupiter seeks to present justification for its rates on a cost basis or any other basis is in the first instance a matter of its own selection and second a question of admissibility to be ruled upon by the presiding examiner.

The continued delays in this § 5(a) proceeding, instituted more than two years ago are entirely unwarranted and contrary to the public interest. Jupiter's motion is no more than an effort to prescribe the order of Commission proceedings. This we cannot permit. Jupiter, if it so chooses, may refrain from filing any evidence in the proceeding. However, it cannot by its fiat unreasonably delay a proceeding which under the statute can only provide prospective relief to consumers. Accordingly, it is our conclusion that these cases proceed in accordance with the schedule set forth in our order issued February 3, 1965, and be continued as expeditiously as possible to decision by the presiding examiner on the complete record made therein.

The Commission orders:

The motion for continuance filed by Jupiter on February 8, 1965, hereby is denied, and the further proceedings herein shall proceed as hereinabove set out.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

DAYTON POWER AND LIGHT COMPANY, DOCKET NO. E–7200

ORDER AUTHORIZING ACQUISITION OF FACILITIES

(Issued February 15, 1965)

Dayton Power and Light Company (Applicant), a corporation organized under the laws of the State of Ohio, filed an application on December 30, 1964, for an order pursuant to Section 203 of the Federal Power Act, requesting authorization to acquire the entire electric facilities of the City of Bellefontaine, Ohio (Bellefontaine).

Applicant is engaged in the production, transmission, distribution and sale of electric energy in 24 counties in southwestern Ohio. It supplies electric energy at wholesale to 19 municipal systems and 5 rural cooperative systems and is also interconnected with The Cincinnati Gas & Electric Company, Columbus and Southern Ohio Electric Company, Ohio Edison Company, and Ohio Power Company.

Bellefontaine, a municipal corporation in the State of Ohio, has for a number of years operated an electric system serving the City and adjacent territory by which it engaged in the generation, purchase and distribution of electric energy. Bellefontaine's electric generation facilities include a 6,000 kw steam-electric generating plant and a 3,000 kw internal combustion electric generating plant. Bellefontaine's electric distribution facilities serve the following numbers of customers: residential, 4,027; commercial, 593; industrial, 24; and governmental, 73. Bellefontaine also owns and operates gas distribution facilities.

Bellefontaine's electric and gas facilities have been offered for sale through a public bid procedure, pursuant to the laws of the State of Ohio. On July 20, 1964, the Council of the City passed its Ordinance No. 3001 authorizing the advertisement for sale of the City's electric and gas facilities for not less than $5,128,200 to the highest and best bidder. The Ordinance was approved by the City's electors on November 3, 1964. The Applicant submitted the only bid for the facilities. This bid was for a total of $5,251,300, of which $3,574,949 was for electric facilities and $1,676,351 was for gas facilities. According to the application, the Applicant's bid was based on an appraisal of the facilities.

The Applicant requests authorization to purchase Bellefontaine's electric facilities for $3,574,949, plus an amount representing the net additions to such facilities from December 15, 1964, to date of transfer. Bellefontaine's electric plant has an estimated original cost of $3,298,000, and an estimated accrued provision for depreciation of $1,702,000, for estimated original cost depreciated of $1,596,000. This amount, plus $29,000 for materials and supplies, and less $65,000 for contributions in aid of construction, results in $1,560,000 for net assets to be acquired by the Applicant. The Applicant's consideration of $3,574,949 for the net assets of $1,560,000, will result in the creation of an Electric Plant Acquisition Adjustment of $2,014,949. The Applicant proposes to eliminate the entire amount of the Electric Plant Acquisition Adjustment by a debit to Miscellaneous Debits to Surplus.

Applicant represents that it will not have to construct any additional transmission facilities to integrate Bellefontaine properties into its own system operations. However, it does propose to construct some 12 kv distribution facilities to supplement the existing 4 kv facilities and to improve existing low voltage conditions in certain areas of the Bellefontaine system. Applicant also proposes to improve customer service by the use of its larger service force and by establishing a district business office and operation center in Bellefontaine to provide customer service on a 24 hour basis.

According to the application, the acquisition by Applicant of Bellefontaine's facilities will permit their consolidation into one integrated system with resultant economies and increased reliability. Applicant further represents that the rates for electric service which will be placed in effect in Bellefontaine will be Applicant's standard electric rates in effect in other communities served by Applicant and any existing customers who would not receive a reduction in rates as a result of the application of Applicant's standard electric rates may remain on Bellefontaine's existing rate for the term of the first rate ordinance which would be for five years.

Written notice of the application has been given to the Public Utilities Commission of Ohio and to the Governor of that State. Notice was also published in the Federal Register on January 7, 1965 (30 F.R. 175), stating that any person desiring to be heard or to make any protest with reference to the application, should on or before Janua̲y 20, 1965, file petitions or protests with the Federal Power Commission, Washington, D.C., 20426. No petition or protest or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued December 21, 1964, *Dayton Power and Light Company, Columbus and Southern Ohio Electric Company,* Docket No. E-7189 (32 FPC 1488).

(2) By the proposed transaction, Applicant will merge or consolidate its facilities subject to the jurisdiction of the Commission with those of Bellefontaine, another person, within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed acquisition of facilities by Applicant, as described above, upon the terms and conditions set forth in the application, and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

(4) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The proposed acquisition by Applicant of the aforementioned electric facilities, all as described above, is authorized and approved upon the terms and conditions and for the purposes set forth in the application subject to the provisions of this order.

(B) Applicant shall record the proposed transaction herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) This authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted by this Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

IOWA SOUTHERN UTILITIES COMPANY, DOCKET NO. CP65-115

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued February 15, 1965)

On October 28, 1964, Iowa Southern Utilities Company (Applicant) filed in Docket No. CP65-115 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) to establish physical connection of its natural gas transmission facilities with the distribution facilities proposed to be constructed by Applicant, and to sell and deliver natural gas to Applicant for distribution and resale in the community of Mount Ayr, Iowa, all as more fully set forth in the application.

The facilities proposed to be constructed by Applicant consist of approximately 10.9 miles of 3-inch lateral pipeline and a distribution system in the community of Mount Ayr, the County Seat of Ringgold County, Iowa, at an estimated cost of $361,436, which will be financed by internally generated funds.

On November 17, 1964, Michigan Wisconsin filed an answer to Applicant's request and stated that it has no objection to the granting of the application which also requests that 5.6 miles of lateral pipeline be constructed and operated by Michigan Wisconsin under its "ten cents formula," at an estimated cost of $117,000. Michigan Wisconsin will also construct and operate metering and regulating facilities.

The estimated volumes of natural gas to meet Applicant's annual and peak day requirements are as follows:

	First year	Second year	Third year
Annual (Mcf)	81,906	139,922	175,073
Peak day (Mcf)	792	1,357	1,699

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

The Commission finds:

(1) Michigan Wisconsin Pipe Line Company, a Delaware corporation having its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order dated November 30, 1946, in Docket No. G–669 (5 FPC 953).

(2) Applicant, Iowa Southern Utilities Company, is a public utility duly organized and existing under the laws of the State of Delaware and is authorized to engage in the business of distributing and selling natural gas within the State of Iowa.

(3) It is necessary and desirable in the public interest that Michigan Wisconsin be directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver to Applicant its daily and annual requirements as set forth in the application and as hereinafter ordered and conditioned.

(4) Applicant should be prepared to receive natural gas from Michigan Wisconsin within one year from the date of issuance of this order.

(5) The requirement that Michigan Wisconsin serve Applicant, as proposed, will not place any undue burden upon Michigan Wisconsin nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Michigan Wisconsin Pipe Line Company be and it is hereby directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver to Applicant its maximum daily and annual requirements of natural gas as hereinbefore described and as more fully described in the application.

(B) Applicant shall be prepared to receive natural gas from Michigan Wisconsin within one year from the date of issuance of this order.

(C) Michigan Wisconsin shall report to the Commission in writing the date of commencement of service to Applicant within ten days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

IOWA SOUTHERN UTILITIES COMPANY, DOCKET NO. CP65–139

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued February 15, 1965)

On November 16, 1964, Iowa Southern Utilities Company (Applicant) filed in Docket No. CP65–139 an application pursuant to Section 7(a) of the Natural Gas Act for an order directing Natural Gas Pipeline Company of America

(Natural) to establish physical connection of its transmission facilities with the proposed facilities of Applicant and to sell natural gas to it for resale and distribution in the community of Ainsworth, Iowa, all as more fully set forth in the application.

Applicant proposes to construct and operate 4.7 miles of 2⅜-inch pipeline between the point of interconnection and the distribution facilities in Ainsworth. Applicant will also construct and operate distribution facilities to provide the proposed service in the community of Ainsworth, Iowa. The estimated total cost of Applicant's facilities is $88,986, to be financed from funds on hand.

A franchise has been issued to Applicant by the municipality.

The application shows the estimated gas requirement for the third year of service will be 233 Mcf for peak day and 23,201 Mcf annually.

On December 11, 1964, Natural filed an answer to the subject application stating that it is willing to provide the proposed service and that it estimates the costs of the necessary tap and meter facilities, including 600 feet of pipe, to be $17,800.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

The Commission finds:

(1) Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 13, 1942, in Docket No. G–235 (3 FPC 830).

(2) Applicant, Iowa Southern Utilities Company, is a public utility duly organized and existing under the laws of the State of Delaware and is authorized to engage in the business of distributing and selling natural gas within the State of Iowa.

(3) It is necessary and desirable in the public interest that Natural be directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver up to 233 Mcf of natural gas per day to Applicant, as set forth in the application and as hereinafter ordered and conditioned.

(4) Applicant should be prepared to receive natural gas from Natural within one year from the date of issuance of this order.

(5) The requirement that Natural serve Applicant, as proposed, will not place any undue burden upon Natural nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Natural Gas Pipeline Company of America be and it is hereby directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver up to 233 Mcf of natural gas per day to Applicant, all as hereinbefore described and as more fully set forth in the application.

(B) Applicant shall be prepared to receive natural gas from Natural within one year from the date of issuance of this order.

(C) Natural shall report to the Commission in writing the date of commencement of service to Applicant within ten days therof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

THE JUPITER CORPORATION, DOCKET NO. RI63-212; TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP65-58

ORDER DENYING PETITION FOR REHEARING

(Issued February 15, 1965)

On January 26, 1965, The Jupiter Corporation (Jupiter), filed a Petition for Rehearing in which it requests the Commission to reconsider and reverse its order issued January 18, 1965, 33 FPC 82, denying Jupiter's motion to terminate these proceedings. That motion, termed a "settlement", requested that merely on the basis of the allegations therein and on the application for a certificate of public convenience and necessity filed by Tennessee Gas Transmission Company in Docket No. CP65-58, we grant that certificate and at the same time moot the investigation of Jupiter's rates in Docket No. RP63-12.

As noted in our order, Jupiter's proposal would result in summary disposal of these proceedings without consideration of the evidence proposed by the Staff and would deny hearing to interveners and parties objecting to the proposal. We further noted that under the summary disposition urged by the motion we would be deprived of any opportunity to determine on the basis of record evidence whether the lease arrangement proposed in the certificate application would operate in a way which would have an adverse effect on consumers. Accordingly, we denied Jupiter's motion and directed that the hearing be expedited in accordance with the procedures theretofore prescribed.

In its Petition for Rehearing, Jupiter contends that we improperly denied its motion because we relied on two erroneous premises. First, that we assumed "the cases must go to full adversary hearing" because other parties raised opposing arguments to the motion. Second, that underlying our order there "seems to be the feeling" that the Commission cannot approve a settlement proposal if any party objects thereto.

As to its first "erroneous premise", Jupiter argues:

> This, of course, is contrary to the established rule of law that in consideration of a pretrial or prehearing motion which would be, if granted, dispositive of the proceedings, the allegations of pleadings before the forum, for purposes of ruling upon that motion only, are to be taken as true. Jupiter submits that taking the allegations of its Motion, and of the Answers of the Staff and Long Island, as true, the propriety of approval of Jupiter's motion is established.

Jupiter then repeats the allegations in its motion which it now contends are facts which must be taken as true and as such establish the propriety of approval of its motion. Further, while declaring that Staff's allegations must also be accepted as true for purposes of the motion, Jupiter attempts to brush them aside by arguing that those allegations are not facts but merely assumptions or matters relating to controlling law and Commission policy. Those allegations, however, include a factual contention that the rental fee under the lease which Jupiter urges us to approve would be excessive by about $970,000 annually when related to the rates reflected in the Staff cost of service.

We are not aware of any such "established rule of laws" as is urged by Jupiter in its petition. However, assuming the validity of such a rule of law, and without even implying that we are now reaching a determination in these proceedings, which determination, we repeat, can properly be reached only on a complete record made in hearing, we are of the view that based on the pleadings before us, Jupiter has not established the propriety of approval of its motion. Clearly we could not approve without hearing any lease by Tennessee which might involve such an excessive charge, unless Tennessee were willing to agree to condition the certificate upon its deduction from cost of service in any rate case the amount we would determine to be excessive. Tennessee has given no indication it would agree to any such arrangement.

Jupiter's assignment of error to our order on its claimed "second erroneous premise" is likewise incorrect and without basis. In effect, Jupiter there contends that we should not have given any consideration to the objections to the motion filed by Long Island Lighting Company, an intervener in the proceedings, in our denial of that motion. In support thereof, Jupiter cites a number of cases in which we approved settlements of rate proceedings over objections of certain parties. Those cases are inapposite. None of those cases involved an application for a certificate of public convenience and necessity under Section 7 of the Natural Gas Act pursuant to which a hearing on the application is mandatory. Further, it is clear from our order issued January 18, 1965, that our basic concern was the absence of record evidence on which we could make the findings required by Section 7 of the Act. The need for hearing and evidence is in fact more acute by reason of the objections of an interested intervener.

We conclude that Jupiter has presented no facts or points of law in its Petition for Rehearing which warrants reversal of our order issued January 18, 1965, or granting of its motion. To the extent that Jupiter in this petition purports to reply to answers by various parties to numerous other documents filed by Jupiter in these proceedings, such reply is not germane to the Petition for Rehearing and will be considered in reference to the appropriate filing.

The Commission orders:

The Petition for Rehearing filed by Jupiter on January 26, 1965 hereby is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TRANSWESTERN PIPELINE COMPANY, DOCKET NO. CP65-167

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 15, 1965)

On December 10, 1964, Transwestern Pipeline Company (Applicant), filed in Docket No. CP65-167 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas to Great Plains Gas Company (Great Plains) and the installation and operation of facilities related thereto, all as more fully set forth in the application.

Applicant seeks authorization to sell natural gas to Great Plains pursuant to an agreement between the parties dated November 9, 1964, which provides for sales to Great Plains for resale to right-of-way customers in the Texas and Oklahoma Panhandle area in which Applicant has pipeline facilities. Applicant proposes to install and operate such additional pipeline tap valves as may be required to render service to Great Plains at points on Applicant's existing pipeline system in certain counties in Texas and Oklahoma. Great Plains will reimburse Applicant for material and installation costs required to make such sales.

Applicant was granted permanent authorization by the Commission on April 6, 1964, 31 FPC 878, in Docket No. CP64–148, to render service to Great Plains Gas Company in Dallam, Sherman, Hansford, Ochiltree, Lipscomb, Moore, Hutchinson and Hemphill Counties, Texas. No increase in authorized maximum daily or annual volumes is requested in the subject application, since sales volumes to Great Plains previously authorized were the total volumes for both Texas and Oklahoma customers, but were not so identified at that time.

A temporary certificate authorizing the subject sale and facilities was issued to Applicant on December 31, 1964.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on February 12, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization, and upon consideration of the record,

The Commission finds:

(1) Applicant, Transwestern Pipeline Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued October 10, 1963 in Docket No. CP63–290 (30 FPC 997).

(2) The proposed installation and operation of facilities and sale of natural gas by Applicant, as hereinbefore described and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed installation and operation of facilities and sale of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant authorizing the installation and operation of facilities and the sale of up to 1,675 Mcf daily and 612,000 Mcf annually of natural gas by Applicant to Great Plains Gas Company as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation and the transportation of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date on which this order issues.

(D) Applicant shall (1) not sell and deliver to Great Plains Gas Company volumes of natural gas in excess of 1,675 Mcf daily and 612,000 Mcf annually and (2) file an annual report with the Commission showing the number, size, and cost of taps placed in operation, together with a report of annual volumes delivered at each tap.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP65-75

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT

(Issued February 15, 1965)

On September 16, 1964, United Gas Pipe Line Company (Applicant), filed in Docket No. CP65-75 an application, as supplemented on November 4, 1964, pursuant to Section 7 of the Natural Gas Act for (1) a certificate of public convenience and necessity authorizing the continued operation of transmission pipeline facilities near Eucutta, Lumberton and Lucedale, Mississippi, and the transportation of natural gas to Hess Pipe Line Company's (Hess) oil pump stations, and (2) permission to abandon certain other facilities located in Forrest, Perry and George Counties, Mississippi, and in Mobile County, Alabama, all as more fully set forth in the application and supplement.

Applicant proposes to continue the operation of approximately 8.3 miles of 2 to 6-inch pipeline and other related facilities, and supply the firm fuel requirements of Hess for the operation of oil pump stations of Hess located at Eucutta, Lumberton, and Lucedale, Mississippi, served by United since 1951. Total estimated peak day and annual requirements for the three pump stations are 1,800 Mcf and 343,000 Mcf, respectively.

Applicant further proposes to remove and abandon a total of approximately 4.7 miles of 2-inch pipeline and other related facilities originally installed to serve eight heater stations of Hess. The proposed abandonment is the result of the cancellation of Applicant's contract with the Hess company, effective December 19, 1963, which has not purchased any gas from United for use in these heaters since 1960. Hess has consented to the contract cancellation.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on February 12, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplement thereto, and exhibits submitted in support of the authorization, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G-232 (3 FPC 863).

(2) The proposed operation of facilities and transportation and delivery of natural gas to Hess as hereinbefore described, and as more fully described in the application, supplement, and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed operation of facilities and transportation and delivery of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) The facilities proposed to be abandoned, as hereinbefore described and as more fully described in the application and supplement herein, are used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(5) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and approval thereof should be granted as hereinafter ordered.

(6) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(7) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to the Applicant in this proceeding, authorizing the operation of facilities and transportation and delivery of natural gas to Hess Pipe Line Company, as more fully described in the application, supplement and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) Permission for and approval of the abandonment of the facilities hereinbefore described, as more fully described in the application in this proceeding, are hereby granted to Applicant, United Gas Pipe Line Company.

(D) Applicant shall advise the Commission of the date of abandonment of the facilities and service as authorized in paragraph (A) above within ten days of such abandonment.

(E) The certificate issued by paragraph (A) above shall not entitle the industrial customer to whom firm deliveries are authorized herein to any priorities or rights to additional gas for meeting any future increases in its requirements at the expense of firm resale customers desiring to acquire additional gas to meet any further increases in their requirements.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNITED STATES DEPARTMENT OF THE INTERIOR, SOUTHWESTERN POWER ADMINISTRATION, DOCKET NO. E-7172

ORDER CONFIRMING AND APPROVING RATES FOR SALE OF ELECTRIC POWER AND ENERGY

(Issued February 15, 1965)

The Secretary of the Interior, acting on behalf of the Southwestern Power Administration (SWPA) and pursuant to Section 5 of the Flood Control Act of 1944 (58 Stat. 887), on June 30, 1964, filed a request for the extension of the

Commission's confirmation and approval of rate schedules and contractual rates and charges applicable to the integrated system of SWPA as follows:

Rate schedules	Expiration date of Commission approval	Requested extension date
IC and EE	Aug. 9, 1964	July 1, 1969
P-1	Aug. 9, 1964	Mar. 1, 1965
P-2	July 1, 1967	July 1, 1969
Contractual rates and charges—Contained in the following contracts with SWPA:		
Texas Power & Light Co. (Contract Ispa-177)	Sept. 11, 1964	July 1, 1969
Southwestern Electric Power Co. (Contract 14-02-001-782)	Nov. 18, 1964	July 1, 1969
Oklahoma Gas & Electric Co. and Public Service Co. of Oklahoma (Contract Ispa-356)	Aug. 9, 1964	July 1, 1969

In addition, the Secretary requested confirmation and approval for a period from August 9, 1964 to July 1, 1969 of proposed new Rate Schedule F-2, to replace existing Rate Schedule F-1. On July 29, 1964, the Secretary amended his request of June 30, 1964 to request approval of revised proposed Rate Schedule F-2 and extension of approval of Rate Schedule F-1, both for a period ending June 30, 1969.

By orders issued August 7 and December 31, 1964, 32 FPC 562, 1560, the Commission extended the confirmation and approval of Rate Schedules IC, EE, P-1, and F-1 and the above contractual rates and charges to February 15, 1965.

SWPA is an agency of the United States established in the Department of the Interior to execute the purposes of the Flood Control Act of 1944 with respect to the disposition of electric power and energy made available to the Secretary of the Interior from the reservoir projects under control of the Department of the Army in the area comprising all of Arkansas and Louisiana and portions of Missouri, Kansas, Texas and Oklahoma. Currently SWPA markets power from eleven hydroelectric projects constructed by the Corps of Engineers. Nine of these projects with a total installed capacity of 1,020,000 kw are operated as a part of SWPA's Interconnected System. SWPA expects to be marketing the power from ten additional Corps projects by 1972, nine of which would be a part of the Interconnected System.

Power is delivered to customers of SWPA over SWPA-owned and SWPA-leased transmission facilities, and through wheeling arrangements. All power is sold under applicable rate schedules or through special contracts.

The rate schedules and rates and charges for which approval is being requested affect only the Interconnected System and are briefly described as follows:

Rate Schedule F-1—Wholesale Firm Power Service. Demand charge: $1.60 per kw of monthly billing demand. Energy charges: 2 mills per kwh for the first 150 kwh per kw of billing demand, 3 mills per kwh for the next 290 kwh per kw of billing demand, and 5 mills per kwh for energy in excess of 440 kwh per kw of billing demand.

Provision is made for discounts of 10¢ and 40¢ per kw of billing demand where, under specified conditions, the customer provides respectively, (a) transformation and substation facilities, and (b) transmission facilities. Under this rate schedule, SWPA supplies the customer's total requirements except, where a customer utilizes an auxiliary source of power, the energy supplied may be limited in each billing period to an amount proportionate to the ratio of the customer's contract demand and its annual maximum power requirement, and the use of such energy shall generally parallel the normal load patterns of the customer's system load.

Proposed Rate Schedule F–2—Wholesale Firm Power Service. (a) From SWPA Grid:—Demand charge: $1.50 per kw of monthly billing demand, including the use of 200 kwh per kw per month. Energy charge: 4 mills per kwh for all energy in excess of 200 kwh per kw of billing demand per month. Rates apply to firm power service received by a customer at 138 kv or 161 kv at a federally-owned hydroelectric dam, or at 138 kv or 161 kv from transmission lines owned or leased by SWPA, or at 69 kv from a 138/69 kv or 161/69 kv substation located at 138 kv or 161 kv transmission lines owned or leased by SWPA. (b) Other Firm Power Service:—Demand charge: $1.90 per kw of monthly billing demand, including the use of 200 kwh per kw per month. Energy charge: 4 mills per kwh for all energy in excess of 200 kwh per kw of billing demand per month.

Rate Schedule P–1—Wholesale Peaking Power Service. Demand charge: $1.60 per kw of monthly billing demand. Energy charge: 2 mills per kwh for the first 150 kwh per kw of monthly billing demand and 3 mills per kwh for the next 50 kwh per kw of billing demand.

Energy associated with peaking power is available in the amount of 1,800 kwh per kw of contract demand during each fiscal year beginning July 1 of each year, except that an additional amount up to 2,400 kwh per year may be made available where the customer can demonstrate need therefore.

The energy charges are applied so that notwithstanding monthly variations in the delivery of energy permitted by contract, the energy charge shall be 2 mills per kwh for the first 1,800 kwh per kw of contract demand per fiscal year and 3 mills per kwh of energy in excess of 1,800 kwh per kw of contract demand per fiscal year. Also, provision is made for the same discounts on demand charges as those available under Rate Schedule F–1. It is requested that approval be extended to March 1, 1965, at which time the rate schedule will be allowed to expire.

Rate Schedule P–2—Wholesale Hydro Peaking Power Service and Seasonal Peaking Power Service. Demand charge: $14.40 per kw-year of hydro peaking power and/or seasonal peaking power, payable at the rate of $1.20 per kw-month. Energy charge: 2 mills per kwh.

This schedule is for the sale of hydro peaking and seasonal peaking power from SWPA's main transmission grid. It provides for delivery of power at the voltage of 138 kv or 161 kv from transmission systems owned or available to SWPA, or at lower or intermediate voltage from substations directly connected to such transmission systems. The minimum amount of energy associated with service under this rate schedule is 1,200 kwh per kw of demand during each contract year.

The Commission has heretofore approved this rate schedule until July 1, 1967 and it is requested that the approval be extended at this time to July 1, 1969, at which time the other rates for SWPA would be up for review and approval.

Rate Schedule IC—Wholesale Interruptible Capacity. Demand charge: 4.5¢ per kw per day of interruptible capacity. Energy charge: 2 mills per kwh, or returned by customer as scheduled by the Government.

Rate Schedule EE—Wholesale Excess Energy. Energy charge: 1.5 mills per kwh of excess energy.

The charges under Rate Schedules F–1 and F–2 would be the same at monthly load factors of 20, 48, and 73 percent. At load factors between 20 and 48 percent and in excess of 73 percent the charges would be less under Rate Schedule F–2. At all other load factors the charges would be higher under the F–2 schedule. There would be one other significant difference. Under the proposed F–2 schedule, SWPA could establish minimum and/or maximum amounts of energy for delivery to customers which utilize an auxiliary source of power supply in conjunction with firm power purchased from SWPA. The F–1 schedule permits setting only maximum limits on energy deliveries.

Western Farmers Electric Cooperative protested to the Commission the proposed substitution of Rate Schedule F–2 for Rate Schedule F–1. Also, other customers advised SWPA of their preference to continue purchasing power under Rate Schedule F–1 rather than F–2. After considering these views, Interior amended its initial application to include a request for extended approval of Rate Schedule F–1, but continued the request for approval of the proposed new Rate Schedule F–2. As now proposed, existing and new firm power customers would be billed for firm power under Rate Schedule F–1. Thereafter the customer would have the option, at any time, upon at least 30 days advance written notice to elect to take firm power service under Rate Schedule F–2. Upon exercising this option the customer could not revert to purchasing power under Rate Schedule F–1.

We believe the initial proposal to substitute Rate Schedule F–2 for Schedule F–1 has merit. We do not think it would be desirable, however, to approve both of these rate schedules. The effect of approving both schedules would be to reduce rates to those customers who would find it advantageous to change to the F–2 schedule. We believe, therefore, that the proposed F–2 schedule should not be approved while the F–1 schedule is still effective.

Contractual Rates and Charges

Texas Power and Light Company (*Contract Ispa–177*). This contract between SWPA and the Texas Power & Light Company (TP&L), which expires July 1, 1977, provides for the Company to purchase from SWPA the capacity of one 35,000-kilowatt unit at the Denison project, plus 70 million kilowatt-hours of primary energy and one-half the secondary energy generated at the project each year. TP&L pays $1.20 per kw per month for the 35,000 kw of contract demand but is credited at the rate of $0.045 per kw per day for each kilowatt of contract demand scheduled but not delivered. Capacity purchased in excess of contract demand is billed also at the rate of $0.045 per kw per day. The energy charge is 2.0 mills per kwh for primary energy and 1.5 mills per kwh for secondary energy.

The contract also provides for SWPA to purchase power from TP&L for resale to preference customers of SWPA presently receiving service from the Company's system. SWPA compensates TP&L for the capacity and energy it transmits to the preference customers at a monthly rate of $1.60 per kw for capacity plus 2.0 mills per kwh for the first 150 kwh per kw of demand, 3.0 mills per kwh for the next 215 kwh per kw, and 5.0 mills per kwh per kw for each kwh in excess of 365 kwh. This rate is the same as SWPA's Rate Schedule F–1 for load factors up to 50 percent but is slightly higher for higher load factors.

SWPA sells the power and energy delivered by TP&L to preference customers under provisions of Rate Schedule F–1. Under this marketing arrangement SWPA pays TP&L approximately two percent, or $24,000 per year, in excess of the revenue which it receives from resale of the power to its preference customers.

Southwestern Electric Power Company (*Contract 14–02–001–782*). This contract between SWPA and Southwestern Electric Power Company (Southwestern), which expires July 1, 1976, provides for SWPA to supply peaking capacity and energy and excess hydroelectric energy to Southwestern, and for the latter to supply the total requirements of those customers (only one at this time with a demand of about 3,000 kw) of SWPA which are served through facilities of Southwestern. For each kilowatt of demand of SWPA's customers supplied by Southwestern, SWPA delivers to the Company two kilowatts of peaking capacity and 1,800 kwh per kw per year of primary energy.

Southwestern pays the Government $1.20 per kw-month for capacity, 2.0 mills per kwh for primary energy, and 1.5 mills per kwh for excess energy. The Government pays Southwestern $1.65 per kw-month for capacity delivered to SWPA's customers plus 3 mills per kwh for energy, subject to a fuel cost adjustment. At 50 percent load factor this rate averages 7.52 mills per kwh. In turn SWPA's customers pay the Government for delivered power and energy in accordance with provisions of Rate Schedule F-1, which rate is equivalent to 6.97 mills per kwh at 50 percent load factor.

Under this marketing arrangement SWPA pays Southwestern about eight percent, or $8,500 per year, in excess of the revenue which it receives from resale for the power to its preference customers.

Oklahoma Gas and Electric Company and Public Service Company of Oklahoma (Contract Ispa-356). This contract between SWPA and the Oklahoma Companies, which expires July 1, 1977, provides for SWPA to supply peaking capacity and energy to the Companies and for the Companies to supply the total power and energy requirements of those customers of SWPA that are served through the facilities of the Companies. For each kilowatt of demand of SWPA's customers supplied by the Companies, SWPA delivers to the Companies 1.65 kilowatts of peaking capacity and 1,800 kwh per kw per year of primary energy. In addition, the Oklahoma Companies may purchase excess capacity, with or without additional energy, and excess hydroelectric energy.

The Oklahoma Companies pay the Government $1.20 per kw-month for capacity, plus 2.0 mills per kwh for primary energy, and 1.5 mills per kwh for excess energy. For excess capacity with or without energy, the Companies pay $0.045 per kw-day for each kw scheduled and received in excess of the contract demand of the Companies. Energy associated with excess capacity costs 2.0 mills per kwh.

The Government pays the Oklahoma Companies $1.60 per kw-month for capacity delivered to SWPA's customers plus 3.5 mills per kwh for energy. At 50 percent load factor payments for capacity and associated energy average 7.88 mills per kwh. The Government may also purchase off-peak energy from the Companies for 3.65 mills per kwh.

Preference customers pay the Government for delivered power and energy in accordance with provisions of Rate Schedule F-1 (6.97 mills per kwh at 50 percent load factor).

SWPA is currently selling about 135,000 kilowatts of peaking power to the Oklahoma Companies and sales are expected to increase to 247,000 kilowatts by 1972. Based on the present level of sales under this marketing arrangement, SWPA pays the Oklahoma Companies about 14 percent, or $350,000 per year, in excess of the revenue which it receives from resale of the power to preference customers. This difference would increase as power sales increase.

The contractual arrangements with the Texas, Southwestern, and Oklahoma Companies were made to enable SWPA to market power to preference customers at system load factors. All sales to the companies are made at SWPA's standard rates for peaking power. In each case SWPA purchases power from the companies for resale to preference customers, and in each case SWPA's payments for power it purchases are greater than the revenues it receives from resale of the power to preference customers. Based on the present level of sales, this difference amounts to about $382,500 annually. Southwestern and the Oklahoma Companies have filed the contracts mentioned above pursuant to the rate schedule filing requirements of Section 205 of the Federal Power Act, and the Commission has accepted them for filing. The staff is now investigating the charges paid by SWPA under these contracts. TP&L has not filed Contract Ispa–177 because, the Company contends, in letters dated February 26 and May 11, 1964, it is not a public utility, within the meaning of the Federal Power Act.

Repayment Study

In support of the rate schedules and contractual rates and charges previously discussed, Interior has filed SWPA's "Average Rate and Repayment Study, February 1964 (Revised Final)." This study purports to show that revenues resulting from the sale of power and energy at existing rates will amortize the capital investment allocated to power in fiscal year 2015, forty-three years after the last unit in a proposed expanded Interconnected System is assumed to be in operation.

The amortization policy adopted in SWPA's study is similar to that used for systems of the Bonneville Power Administration and Southeastern Power Administration. For rate and repayment purpose, the capital investment in power facilities of an individual project is amortized 50 years after it becomes operable but subsequent revenues created by the sale of power continued to be produced at the project are applied to the amortization of the investment in power facilities at projects with later in-service dates.

Nine hydroelectric projects of the Corps of Engineers, having a total installed capacity of 1,020,000 kw, are operated as a part of SWPA's Interconnected System. The first project began operations in 1944 and the last two, with a total capacity of 186,000 kw, have been operating for only a few months. Seven additional projects are under construction. They will add 629,200 kw to the Interconnected System during the period 1965–1970. SWPA has included two additional projects in its repayment study. These are the authorized 76,400 kw Kaysinger Bluff project and the 500,000 kw Petit Jean project which is now being studied by the Corps of Engineers but not as yet authorized by Congress. The total capacity of all these projects is 2,225,600 kw. In addition, SWPA has contracted for 183,100 kw of thermal capacity in G&T Cooperative and municipal plants.

SWPA markets power from its own transmission facilities and through contractual arrangements with others. It sells both peaking power and system load factor power. Most peaking power is sold from the main 161-kv grid at a rate of 1.20 per kw per month for capacity plus 2.0 mills per kwh for energy. This rate is nearly equal to the estimated cost of power from large new privately financed steam-electric plants being constructed in the area. System load factor power is delivered to preference customers and sold at a rate of $1.60 per kw per month plus a block energy rate which amounts to about 2.6 mills per kwh at 50 percent load factor. This computes to an overall charge of about 7.0 mills per kilowatt-hour. Many cooperatives in the area pay about the same rate for power purchased from private utilities, although some in Arkansas pay substantially less. Most municipal systems pay higher rates for purchases from the private utility systems.

SWPA's revenues have fallen far short of meeting repayment requirements. From its inception through fiscal year 1964, net revenues have failed by some $34 million of paying interest charges on the Federal investment in generating and transmission facilities. In fiscal year 1964 gross revenues totaled $17.7 million. Operating expenses totaled $15.6 million, so only $2.1 million of net revenues were available to pay interest charges on the investment and to amortize investment costs. Since interest charges amounted to about $6.8 million, the investment to be repaid actually increased $4.7 million during the year. The operating expenses of $15.6 million comprise the following: $1.9 million for operation, maintenance, and replacement costs at system hydroelectric projects; $6.8 million for power purchased by SWPA; $5.2 million for transmission and service charges paid to Associated Electric Cooperative and Western Farmers Electric Cooperative: and 1.7 million for operation and maintenance of SWPA's transmission facilities and for costs of administration.

Interior's repayment study forecasts that beginning in fiscal year 1965, and in each year thereafter, gross revenues will be sufficient to pay all operating expenses and interest charges and provide varying amounts for amortization of investment costs. It indicates that all investment costs would be repaid by the year 2015, or 43 years following the in-service date of the proposed Petit Jean project.

There are many factors which could alter Interior's optimistic outlook. The Petit Jean project may not be authorized for Federal construction, all of the power from future projects may not be fully marketable as assumed, water available for hydroelectric generation may be less than estimated, and future marketing expenses may be higher than estimated. There is no doubt, however, that with the many new projects being added to the system, and if prudent marketing practices are followed, marked improvement in SWPA's financial condition can be obtained. During the period 1964 to 1972, SWPA forecasts that its annual operating expenses will increase from $15.6 million to about $22 million, but that annual gross revenues will increase from $17.7 million to $49 million.

Our review indicates that in general the level of rates in SWPA's rate schedules and power sales contracts is reasonable for SWPA's operation, but that SWPA has incurred excessive contractual costs in marketing the hydroelectric power. In addition to the three contracts mentioned above there are two contracts in which SWPA may be making excessive payments for power purchases or transmission and service charges, namely, the contract with Associated Electric Cooperative, Inc., and the one with Western Farmers Electric Cooperative.

Associated Electric Cooperative, Inc.

This contract between SWPA and Associated became effective August 1, 1962 and extends through May 31, 2000. It supersedes long term contracts with the six G&T cooperatives which comprise Associated. The contract provides for the sale of 288,000 kw of capacity and 345.6 million kwh of firm energy annually, for which annual revenues would total $4,838,400. In addition, sales of secondary energy at 2.0 mills per kwh are expected to average 573 million kwh annually, and thus provide additional average annual revenues of $1,146,000. The contract obligates SWPA to make annual payments of $4,701,300 (reducing to $3,688,300 beginning in fiscal year 1997) to Associated for various transmission and other services.

The Commission's order of April 30, 1962 in Docket No. E-6975, 27 FPC 895, approving SWPA's Rate Schedule P-2, discusses the Associated contract as proposed at that time and notes that it would be subject to the rate schedule filing requirements of Section 205 of the Federal Power Act to the extent that the facilities utilized to render services to SWPA are subject to the jurisdiction of the Commission. The question of the Commission's jurisdiction over REA cooperatives is under consideration in Docket No. E-7113, Dairyland Power Cooperative, et al. The Commission by its order of August 6, 1964, 32 FPC 529, directed the examiner to defer issuing his initial decision in this proceeding until January 1, 1966. Therefore, any further consideration of the Associated contract under Section 205 of the Federal Power Act would be deferred until sometime after January 1, 1966. This does not foreclose the consideration by the Commission under the Flood Control Act of 1944 of the charges for services by Associated to the extent that they may properly be considered as offsets to the rates charged Associated by SWPA. Such offsets would be to the rates in Rate Schedule P-2, and this schedule has been approved by the Commission to July 1, 1967.

Western Farmers Electric Cooperative

Southwestern Power Administration has two interrelated contracts with Western Farmers Electric Cooperative (Western) under which SWPA makes power sales to Western and to other preference customers through use of Western's transmission facilities. These contracts became effective July 1, 1957 and terminate July 1, 1995. The contracts obligate SWPA to make annual payments to Western for transmission service charges ranging from in excess of $1,000,000 initially down to $316,000 in fiscal year 1982 and thereafter. The payment in fiscal year 1964 was $908,000. In that year SWPA sold 30,000 kilowatts of peaking power to Western and 500 kilowatts of system load factor power to Altus Air Force Base through use of Western's transmission facilities. The total revenue from these sales was $698,700. Thus, SWPA netted minus $209,300 for transactions under this contract in fiscal year 1964. This is exclusive of 31,000 kilowatts of thermal capacity which SWPA purchases from Western at $1.60 per kw per month plus 2 mills per kwh.

Power sales under this contract are expected to increase considerably. By 1972, annual sales are expected to produce revenue of $2,096,600. The annual service charge at that time will be $604,000, so an annual net revenue of $1,492,600 is anticipated.

The jurisdictional problem and the question of offsets is the same here as with Associated Electric Cooperative, Inc. Although sales to Western Farmers have been made under Rate Schedule P-1, this schedule is being discontinued and future sales will be made under Rate Schedule P-2.

Thus, a primary cause of SWPA's financial plight is the substantial payments it makes under its contract with Associated Electric Cooperative, Inc., and Western Farmers Electric Cooperative. In view of the jurisdictional problem, it is not possible at this time to investigate these charges pursuant to authority of the Federal Power Act as was contemplated in the Commission's order of April 30, 1962, approving SWPA's Rate Schedule P-2. As an alternative, an investigation of the charges by Associated and Western could be made to determine the extent to which they might properly be considered as offsets to the sales made by SWPA under Rate Schedule P-2. This schedule has, however, already been approved to July 1, 1967.

The Commission's staff is investigating charges to SWPA made under contracts with Southwestern Electric Power Company and the Oklahoma Companies. A similar investigation of charges by Texas Power & Light Company should be made if and when FPC jurisdiction is established. Any reductions in the charges to SWPA under these contracts would be relatively small, however, and would not substantially improve SWPA's financial condition.

In view of the uncertainties still existing in regard to SWPA's ability to repay investment costs within the normal 50-year repayment period, we believe it advisable to limit approval of the rate schedules and the contractual rates and charges to a period ending June 30, 1967, the date that the Commission's approval of Rate Schedule P-2 expires, rather than to extend approval to June 30, 1969, as requested.

Furthermore, we believe it is inadvisable, as noted above, to approve proposed new Rate Schedule F-2 at this time while Rate Schedule F-1 is still in effect.

The Commission finds:

The continued approval of SWPA's Rate Schedules F-1, IC and EE and the contractual rates and charges in the contracts between SWPA and Texas Power

& Light Company (Contract Ispa–177), Southwestern Electric Power Company (Contract 14–02—001–782) and Oklahoma Gas & Electric Company and Public Service Co. of Oklahoma (Contract Ispa–356) for a period beginning February 15, 1965 and expiring June 30, 1967 and the continued approval of Rate Schedule P–1 for a period from February 15, 1965 to March 1, 1965, is not inconsistent with the purposes of the Flood Control Act of 1944.

The Commission orders:

(A) SWPA Rate Schedules F–1, IC and EE, and the contractual rates and charges in the contracts between SWPA and Texas Power & Light Company (Contract Ispa–177), Southwestern Electric Power Company (Contract 14–02—001–782) and Oklahoma Gas & Electric Company and Public Service Co. of Oklahoma (Contract Ispa–356) are hereby confirmed and approved for a period extending from February 15, 1965 to July 1, 1967.

(B) The confirmation and approval of SWPA Rate Schedule P–1 is extended from February 15, 1965 to March 1, 1965.

(C) The request for confirmation and approval of the proposed SWPA Rate Schedule F–2 is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

VILLAGE OF KARNAK, ILLINOIS, DOCKET NO. CP65–95

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued February 16, 1965)

On October 9, 1964, the Village of Karnak, Illinois (Applicant) filed in Docket No. CP65–95 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Trunkline Gas Company (Trunkline) to establish physical connection of its transmission facilities with the proposed facilities of and to sell natural gas to Applicant for resale and distribution in said village and environs, all as more fully set forth in the application in this proceeding.

Applicant proposes to construct and operate a municipally owned natural gas distribution system within its borders and approximately 5.35 miles of 2-inch lateral transmission line extending easterly from its city gate to a proposed interconnection with Trunkline's main transmission system in Massac County, Illinois.

Applicant's estimated third year peak day and annual natural gas requirements are 365 Mcf and 28,730 Mcf, respectively.

The total estimated cost of the proposed project is $143,000, which cost will be financed by the issuance of gas public utility certificates.

On November 16, 1964, Trunkline filed an answer to the application herein stating that it had no objection to the issuance of the order requested by Applicant.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on December 18, 1964 (29 F.R. 18025). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) Trunkline Gas Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the

meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 29, 1949, in Docket No. G–882 (8 FPC 250).

(2) Applicant, the Village of Karnak, Illinois, is a municipal corporation incorporated under the laws of the State of Illinois and is legally empowered to construct and operate natural gas facilities and to sell and distribute natural gas in said village.

(3) It is necessary and desirable in the public interest that Trunkline be directed to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to sell and deliver up to 365 Mcf of natural gas per day to Applicant, as set forth in the application and as hereinafter ordered and conditioned.

(4) This order should be conditioned upon Applicant being prepared to receive gas from Trunkline, as proposed, within nine months from the date on which this order issues.

(5) The requirement that Trunkline serve Applicant, as proposed, will not place any undue burden upon Trunkline nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Trunkline Gas Company be and it is hereby directed to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to sell and deliver up to 365 Mcf of natural gas per day to Applicant, all as hereinbefore described and as set forth in the application.

(B) Trunkline shall report to the Commission in writing the date of commencement of service to Applicant, within ten days of such date.

(C) This order is conditioned upon Applicant being prepared to receive natural gas from Trunkline, as proposed, within nine months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. G–14872

ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 16, 1965)

On August 12, 1963, Natural Gas Pipeline Company of America (Applicant) filed in Docket No. G–14872 an application to further amend the order of the Commission issued October 27, 1958, 20 FPC 551, as amended by orders issued April 27, 1959, 21 FPC 583, April 21, 1960, 23 FPC 618, and December 2, 1960, 24 FPC 1054, in Docket No. G–14872, authorizing among other things the construction and operation of additional natural gas facilities in the Herscher Storage Field, Kankakee County, Illinois, for the purpose of testing the Mt. Simon formation as a storage reservoir.

The application to amend filed on August 12, 1963, seeks the deletion of (1) Ordering Paragraph (B)(1), which limited the maximum storage inventory in zones 3 and 4 of the Eau Clair-Mt. Simon formations to 5 billion cubic feet of natural gas (increased by amending orders issued April 27, 1959, April 21, 1960 and December 2, 1960, and by order issued May 26, 1964, in Docket No. CP64–113 to a currently effective inventory volume of 45 billion cubic feet), and (2) Ordering Paragraph (B)(2) requiring Applicant to submit monthly reports of all pertinent data relating to the Eau Clair-Mt. Simon formation in the Herscher Storage Field in Kankakee County, Illinois, all as more fully set forth in the said application to amend.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on October 29, 1963 (28 F.R. 41520). No petition to intervene, notice of intervention, or protest to the granting of the application has been filed.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued October 27, 1958, in Docket No. G–14872, be further amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued October 27, 1958, in Docket No. G–14872, be and the same is hereby further amended so as to modify the provisions of Ordering Paragraph (B)(2) thereof and (1) increase the limitation on the maximum storage inventory in zones 3 and 4 of the Eau Clair-Mt. Simon formations to 45 billion cubic feet, and (2) modify the ordering provisions thereof relating to monthly reports so as to require the Applicant to make semi-annual reports consistent with the order of the Commission relating to reservoir reports prescribed by the Commission in its order issued November 20, 1958, in Docket No. G–15328, 20 FPC 735.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP65–147

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 16, 1965)

On November 20, 1964, Northern Natural Gas Company (Applicant) filed in Docket No. CP65–147, an application pursuant to Section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing the transportation of natural gas on a firm basis to the Clinton Engines Corporation (Clinton Engines) at Maquoketa, Iowa, and the John Deere Dubuque Tractor Works of Deere & Company (John Deere) at Dubuque, Iowa, presently served on an interruptible basis, all as more fully set forth in the application.

Applicant proposes to transport and deliver through its Peoples Division to (1) the Clinton Engines plant at Maquoketa, Iowa, 450 Mcf of natural gas daily on a firm basis, and (2) the John Deere plant at Dubuque, Iowa, 500 Mcf of natural gas daily on a firm basis. The volumes of natural gas to be delivered are within People's existing contract demand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on February 12, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G–280 (3 FPC 967).

(2) The proposed transportation and delivery of natural gas by Applicant to Clinton Engines and John Deere, as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed transportation and delivery of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to the Applicant in this proceeding, authorizing the transportation and delivery of natural gas to Clinton Engines and John Deere as more fully described in the application and exhibits in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) The certificate issued hereby shall not entitle the industrial customers to whom firm deliveries are authorized herein to any priorities or rights to additional gas for meeting any future increases in their requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PLAINS GAS FARMERS' CO-OPERATIVE SOCIETY OF HEREFORD, TEXAS, DOCKET NO. CP65–163

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued February 16, 1965)

On December 7, 1964, as supplemented on January 25, 1965, the Plains Gas Farmers' Co-operative Society of Hereford, Texas (Applicant) filed in Docket No. CP65–163 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Transwestern Pipeline Company (Transwestern) to establish physical connections of its natural gas transmission system with the existing facilities of the Applicant at four points in Parmer County, Texas, and to sell and deliver natural gas to Applicant for resale to its members for their consumption in domestic and agricultural uses, all as more fully described in the application.

The application states that at the present time Applicant is supplied with natural gas by Pioneer Natural Gas Company (Pioneer). Applicant further states that Pioneer has, over a period of twelve years, increased its rates to the extent that the present authorization will result in a saving to its members of $20,000 per year.

The total cost of the 4 taps and other equipment and facilities including meters and regulators is estimated at $16,500, which said costs will be borne by the Applicant.

The estimated volume of gas required by Applicant is 196,200 Mcf per year and the peak month volume is 36,130 Mcf for gas service during May when pumping for irrigation is at its highest point.

On December 28, 1964, Transwestern filed an answer to the application herein stating that it had no objection to the issuance of the order requested by Applicant.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on December 19, 1964 (29 F.R. 18106). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) Transwestern Pipeline Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of August 10, 1959, in Docket No. G–14871, *et al.* (22 FPC 391).

(2) Applicant, Plains Gas Farmers' Co-operative Society of Hereford, Texas, is a non-profit corporation under the laws of the State of Texas. One of the primary purposes of the said co-operative, as provided by its articles of incorporation (Article Four) is to secure natural gas for the membership to be used for irrigation and domestic purposes.

(3) It is necessary and desirable in the public interest that Transwestern be directed to established physical connections of its gas transmission system with the existing facilities of Applicant and to sell and deliver up to 36,130 Mcf of natural gas per month to Applicant as set forth in the application.

(4) The requirement that Transwestern serve Applicant, as proposed, will not place any undue burden upon Transwestern nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Transwestern Pipeline Company be and it is hereby directed to establish four connections of its natural gas transmission system with the transmission systems of the Applicant's members in Parmer County, Texas, and to sell and deliver natural gas in volumes of up to 36,130 Mcf per month, all as more fully described in the application.

(B) Applicant shall be prepared to receive natural gas from Transwestern within six months from the date of issuance of this order.

(C) Transwestern shall report to the Commission in writing the date of the commencement of service to Applicant within ten days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TRANSWESTERN PIPELINE COMPANY, DOCKET NO. CP65–192

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 16, 1965)

On December 28, 1964, Transwestern Pipeline Company (Applicant), Houston, Texas, filed in Docket No. CP65–192 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity, authorizing the installation and operation of certain natural gas facilities, all as more fully set forth in the application on file with the Commission.

Applicant proposes to install tap valves, measuring equipment, and appurtenant facilities for the short-term sale of such volumes of natural gas as Cabot Corporation (Cabot), the purchaser, may require and Applicant may have available for delivery, up to 30,000 Mcf per day for a period ending March 1, 1965, or one month later if extended by mutual agreement of the parties.

The estimated cost of Applicant's proposed construction is $3,000, and will be borne by Cabot.

Temporary authorization for the installation and operation of the facilities requested has been granted by Commission letter issued January 15, 1965.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on February 12, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Transwestern Pipeline Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of August 10, 1959, in Docket No. G–14871, *et al.*, (22 FPC 391).

(2) The proposed construction and operation of facilities and delivery of natural gas by Applicant to Cabot as hereinbefore described, and as more fully described in the application and exhibits in this proceeding are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and delivery of natural gas are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to the Applicant in this proceeding, authorizing the construction and operation of facilities and the transportation and delivery of natural gas to Cabot for the period ending not later than April 1, 1965, as more fully described in the application and exhibits in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CAROLINA POWER & LIGHT COMPANY AND DUKE POWER COMPANY, DOCKET NO. E-7192

ORDER AUTHORIZING SALE OF FACILITIES

(Issued February 17, 1965)

Carolina Power & Light Company (Carolina) and Duke Power Company (Duke), filed a joint application on November 23, 1964, for an order pursuant to Section 203 of the Federal Power Act authorizing Carolina to sell and Duke to acquire certain electric transmission facilities.

Carolina is a corporation organized under the laws of North Carolina and qualified to do business within the State of North Carolina and South Carolina with its principal business office in Raleigh, North Carolina. Carolina is engaged in the generation, transmission, distribution and sale to the public of electric energy as a public service company or public utility in 55 counties in North Carolina and 13 counties in South Carolina.

Duke is a corporation organized under the laws of North Carolina and is engaged in the generation, transmission, distribution and sale of electric energy in the States of North Carolina and South Carolina. Its service area embraces all or parts of 37 counties in North Carolina and 15 counties in South Carolina. It owns and operates local transportation systems and water supply systems in parts of its electric service area.

The proposed transaction results from the exercise by Duke of its option which is contained in Article 11 of the Interconnection Agreement between Carolina and Duke, dated June 1, 1961, and filed with the Federal Power Commission as Duke's rate schedule FPC No. 10, the same being also designated on the records of the Commission as Carolina's Rate Schedule FPC No. 45.

The facilities to be transferred consist of: (a) a substation, including the substation lot, at Greenville, South Carolina; and (b) a 31.26 mile section of 115 kv double circuit transmission line which extends northwardly from the substation at Greenville, South Carolina, to Duke's Davidson River Substation, near Brevard, North Carolina. According to the application, the facilities to be transferred have been and are being used for the interchange of electricity between the systems of Carolina and Duke and for the transmission of electric energy by Duke within its own system. The facilities described above lie wholly within the service territory of Duke and Applicants state that when they are integrated with Duke's other facilities, it is anticipated that they can be maintained and operated more efficiently and effectively for the transmission of electric energy within Duke's own system and for the interchange of electricity between the systems of Duke and Carolina.

Applicants represent that by reason of the sale of the facilities to Duke, Carolina will be relieved of substantial annual expenses in the operation and maintenance thereof. Except for the transfer to Duke of obligations incident to the operations or maintenance of the facilities described above, the proposed transaction will have no effect upon any contract for the purchase, sale or interchange of electric energy.

The facilities are to be transferred from Carolina to Duke for a cash consideration of $435,007. On the books of Carolina, the facilities are recorded at original cost of $732,217, with an accumulated provision for depreciation of $265,346, for a net book cost of $466,871. The consideration of $435,007 will be $31,864 less than the net book cost of $466,871. On the books of Duke, the difference of $31,864 will be transferred to accumulated provision for depreciation applicable to the facilities. On the books of Carolina, the difference will be debited to miscellaneous debits to surplus.

Written notice of the application has been given to the North Carolina Public Utilities Commission and to the South Carolina Public Service Commission and to the Governors of those States. Notice was also published in the Federal Register on December 9, 1964 (29 F.R. 16877), stating that any person desiring to be heard or to make any protest with reference to the application, should on or before December 28, 1964 file petitions or protests with the Federal Power Commission, Washington, D.C., 20426. No petition or protest or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Carolina, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act, subject to the jurisdiction of the Commission, as heretofore described in the Commission's order issued January 31, 1957, *In the Matters of Carolina Aluminum Company, Carolina Power & Light Company*, Docket No. E-6712 (17 FPC 83).

(2) Duke is the owner and operator of facilities for the transmission and sale at wholesale of electric energy which is transmitted between North Carolina and Virginia, North Carolina and South Carolina, and between South Carolina and Georgia and consumed outside the State in which it is generated, and, therefore, is a "public utility" within the meaning of that term as used in Section 203 of the Federal Power Act.

(3) By the proposed transaction, Carolina will dispose of part of its facilities, subject to the jurisdiction of the Commission which have a value in excess of $50,000 and Duke, in acquiring such facilities, will merge or consolidate its facilities, subject to the jurisdiction of the Commission with those of Carolina, another person, all within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(4) The proposed sale of facilities by Carolina and the proposed acquisition of these facilities by Duke, as described above, upon the terms and conditions set forth in the application and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

The Commission orders:

(A) The proposed sale by Carolina and the proposed acquisition by Duke of the aforementioned substation and transmission line facilities, all as described above, are authorized and approved upon the terms and conditions and for the purposes set forth in the application subject to the provisions of this order.

(B) The Applicants shall record the proposed transaction herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) This authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted by the Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CITIES SERVICE GAS COMPANY, DOCKET NOS. G–18799 AND RP62–1

ORDER TERMINATING PROCEEDINGS

(Issued February 17, 1965)

By order issued March 27, 1961, in Docket No. G–18799, the Commission approved a proposed Settlement Agreement, which reserved for future determination the single issue of the amount of the allowance for Federal income taxes that should be included in the cost of service underlying the approved settlement. The reserved tax issue involved the question of whether the tax allowance for ratemaking purposes should be computed on the basis of a consolidated return, as proposed by the staff, or on the basis of a separate return, as proposed by Respondent. The Examiner, in his decision issued April 23, 1962, rejected the staff's basis of computing the Federal income tax allowance and approved Respondent's proposed "separate return" theory. By order issued July 15, 1963, the Commission reversed the Examiner's ruling and computed Respondent's tax allowance on the basis of a consolidated return filing with a separation of regulated and non-regulated companies within the consolidated group of filing companies (Opinion No. 396, 30 FPC 158). On appeal the United States Court of Appeals for the Tenth Circuit reversed the Commission's order (*Cities Service Gas Company, et al.*, v. *F.P.C.*, 337 F. 2d 97). The Commission did not seek a writ of certiorari and on January 5, 1965, the Court of Appeals issued its mandate.

The proceeding in Docket No. RP62–1 involves proposed increased rates and charges filed by Respondent on June 21, 1961, under Section 4(e) of the Natural Gas Act and suspended by Commission order issued July 21, 1961. Prior to the termination of the suspension period, the Commission, on December 22, 1961, issued an order approving a proposed Settlement Agreement, which reserved the similar issue of the proper Federal income tax allowance to be included in the cost of service underlying the settlement.

On April 23, 1964, further proposed increased rates and charges, which are the subject of the proceeding in Docket No. RP64–9, became effective subject to refund. Thus, the rates proposed and determined in both Docket No. G–18799 and Docket No. RP62–1 related to "locked-in" periods. Additionally, data filed with this Commission reflects the fact that Respondent, through a public sale of more than 20 percent of its voting stock in August, 1963, is no longer eligible to participate in the consolidated income tax returns filed by its parent company. Therefore, and in order to conform to the mandate of the Court, it is now appropriate to terminate the proceedings in Docket Nos. G–18799 and RP62–1 insofar as they relate to the consolidated income tax issue. The termination of these proceedings and the Commission's decision not to seek certiorari of the Court's decision should not be construed as acquiescence in the correctness of the Court's decision.

The Commission orders:

(A) The proceedings in Docket Nos. G–18799 and RP62–1, insofar as they pertain to the consolidated income tax issue, are hereby terminated and Respondent is relieved of its obligations pertaining thereto for the periods covered by those dockets.

(B) In all other respects, the Settlement Agreements and the above referenced orders approving those settlements remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

THE MONTANA POWER COMPANY, PROJECT NO. 2301

ORDER FURTHER MODIFYING LICENSE ORDER

(Issued February 17, 1965)

On October 12, 1962, the Commission issued a license order under Section 4(e) of the Federal Power Act on application of The Montana Power Company, of Butte, Montana, for a license for constructed Project No. 2301 (28 FPC 586). The license was made effective as of December 1, 1961 and terminating December 31, 1969. The license order incorporated therein by reference Form L–1, December 15, 1953, Article 19 of which (14 FPC 562, 565) provides:

> *Article 19.* The actual legitimate original cost, estimated where not known, and the accrued depreciation of the project as of the effective date of the license shall be determined by the Commission in accordance with the act and the rules and regulations of the Commission, and such cost less such accrued depreciation, so determined, shall be the net investment in the project as of such effective date.

On review of the October 12, 1962 order as modified December 13, 1962 on rehearing (28 FPC 1018), the United States Court of Appeals for the Ninth Circuit held that The Montana Power Company is entitled to a "fair value" license under Section 23(a) of the Federal Power Act and remanded the matter to the Commission with directions to modify the license order accordingly. *Montana Power Company* v. *F.P.C.*, 330 F. 2d 781 (1964).

The Commission finds:

It is appropriate that our license order issued October 12, 1962 in this proceeding as modified December 13, 1962 be further modified, as hereinafter provided.

The Commission orders:

(A) Article 19 of our aforementioned license order issued October 12, 1962 is hereby eliminated from the order and in lieu thereof the following is substituted as Article 19 of the license:

> *Article 19.* The fair value of the project shall be determined in accordance with Section 23(a) of the Act and the rules and regulations of the Commission, and the Licensee hereby agrees to accept such fair value so determined as being the net investment in the project as of the effective date of the license.

(B) The aforementioned Commission order issued October 12, 1962, as modified by order issued December 13, 1962 and as further modified by this order, shall be accepted by the licensee and returned to the Commission within 30 days of the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

RIO SABINE, INC., DOCKET NO. CI62–1098; URBANA PIPE LINE COMPANY, DOCKET NO. CP64–80

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND DISMISSING APPLICATION

(Issued February 17, 1965)

Rio Sabine, Inc. (Rio Sabine) filed in Docket No. CI62–1098 an application on March 19, 1962, and an amendment thereto on January 10, 1963, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of transmission facilities and the sale of natural gas to the Arkansas Louisiana Gas Company, all as more fully set forth in the application and amendment.

The Commission granted Rio Sabine temporary authorization to make the sale to Arkansas Louisiana on April 20, 1962. Pursuant thereto Rio Sabine constructed and has been operating pipeline facilities connecting two small gas fields in Louisiana (Simpson Lake and Millers Bluff) with a gasoline plant of Rio Sabine in Miller County, Arkansas, and the sale and delivery of natural gas from the tail-gate of said plant to Arkansas Louisiana Gas Company under a contract dated March 1, 1962. The estimated cost of the facilities is $94,268, financed by a note issued to Texas Capital Corporation.[1]

Urbana Pipe Line Company (Urbana) filed in Docket No. CP64–80 an application on September 30, 1963, and supplementary data thereto on November 26, 1963, pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities, the acquisition of certain rights and properties of Rio Sabine, Inc., and the sale of natural gas, all as more fully set forth in the application.

The Commission on January 16, 1964, granted Urbana temporary authorization for its proposed acquisition of facilities and continued operation thereof.

Urbana proposes (1) to purchase from Rio Sabine approximately 11 miles of 2, 2½ and 3-inch pipeline in the ground and three 4-inch meter runs with meters for $14,876.85, (2) to construct and operate a compressor station and facilities to tie casinghead gas wells into its pipeline system at a cost of $23,000 and (3) continue the sale and delivery of natural gas to Arkansas Louisiana authorized by the Commission in its grant of temporary authorization of April 20, 1962, in Docket No. CI62–1098, and covered by Rio Sabine, Inc., FPC Gas Rate Schedule No. 2.

---

[1] A Federal Licensee under Small Business Investment Act of 1958.

Acquisition by Urbana of all the facilities originally proposed and constructed by Rio Sabine and operated under a temporary authorization of April 20, 1962, will render moot the certificate application of Rio Sabine, and the same should be dismissed.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on February 12, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications and exhibits, submitted in support of the authorizations sought by Rio Sabine in Docket No. CI62–1098 and Urbana in Docket No. CP64–80, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Rio Sabine, Inc., a Texas Corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act.

(2) Urbana Pipe Line Company, a Delaware corporation having its principal place of business in Dallas, Texas, upon acquisition of the facilities of Rio Sabine and the commencement of the sale and transportation of natural gas as proposed in Docket No. CP64–80 will be engaged in the business of transporting and selling natural gas in interstate commerce subject to the jurisdiction of the Commission, and will therefore be a "natural-gas company" within the meaning of the Natural Gas Act.

(3) The proposed acquisition of facilities from Rio Sabine, the construction and operation of facilities by Urbana, and sale of natural gas in interstate commerce by Urbana, as hereinbefore described, and as more fully described in the applications and exhibits in this proceeding are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The aforesaid proposed acquisition of facilities, construction and operation of facilities and sale of natural gas are required by the public convenience and necessity and certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Urbana is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(6) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Urbana's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the application filed by Rio Sabine in Docket No. CI62–1098 be dismissed as moot.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Urbana in these proceedings authorizing the acquisition of the facilities, of Rio Sabine construction and operation of facilities and sale of natural gas in interstate commerce, as hereinbefore described, all as more fully described in the applications and exhibits filed in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above, and the rights granted thereunder are hereby conditioned upon Urbana's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), (d)(2), (d)(3) and (e) of Section 157.20 of such Regulations.

(C The facilities and acquisitions authorized by paragraph (A) above shall be effected, constructed and placed in operation by Urbana within 12 months from the date of the issuance of this order.

(D) The application filed in Docket No. CI62–1098 on March 19, 1962, be and the same is hereby dismissed.

OPINION NO. 449

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP63–222

OPINION AND ORDER GRANTING CERTIFICATE

(Issued February 17, 1965)[*]

Syllabus

1. Transaction between Transco and Texaco is a transportation agreement and public convenience and necessity requires certification of the proposed service under Section 7 of Natural Gas Act. P. 239.
2. Contractual provisions do not control Commission's jurisdictional determinations. P. 240.
3. Contract terms here conform generally to other Commission approved transportation agreements and in light of facts, instant situation does not involve a sale by Texaco to Transco. PP. 240, 241.
4. *Distinguishing Lo-Vaca*, Commission *concludes* that mere physical commingling of Texaco's gas in Transco's lines with gas Transco has purchased for subsequent resale does not compel rejection of historic notions of bailments and require transformation of transportation agreement into a succession of sales. P. 241.
5. Essential feature of instant transaction is that Texaco is owner of gas both at beginning and end of its journey from wellhead to point of ultimate consumption. P. 241.
6. While transfers of gas from producer to pipeline or pipeline to direct customer may be treated as a sale for regulatory purposes in appropriate circumstances, there is no reason to do so here where clearly intermediate transactions result in returning gas to original producer-owner and no jurisdictional question is involved—in reaching such determination Commission does not decide status of other types of transactions, such as X–20 case. P. 241.
7. Beneficial features of transportation agreement *discussed*. PP. 241, 242.
8. Intervener's Offer of Settlement rejected since it is an attempt to present entirely new affirmative case almost a year after close of record. P. 242.
9. No justification has been shown for requiring that "just and reasonable" rates for transportation service be determined in this proceeding. P. 258..
10. Not all difference in treatment between customers is illegal under the Act—only unjust, unreasonable or undue discrimination. P. 263.

---

[*] Initial decision appears on P. 242. Rehearing denied by Opinion No. 449–A, *infra* P. 818. Affirmed, *sub nom. Public Service Electric & Gas Co.* v. *F.P.C.*, 371 F. 2d 1 (CA3–1967). Petition for certiorari filed in *Public Electric & Gas Co.* v. *F.P.C.*, S. Ct. No. 93, O. T. 1967.

11. Economics favor use by Texaco of its own gas rather than purchasing it from distributor in area. P. 265.

12. Precedent cases establish that there is no Commission policy against approval of proposed transportation service if it is otherwise required by public convenience and necessity. P. 273.

13. Commission *issues* certificate of public convenience and necessity authorizing transportation service, in proceeding arising under Section 7 of the Natural Gas Act.

Commissioner O'Connor *concurs* in the result.

William N. Bonner, Jr., R. V. Loftin, Jr., Richard J. Connor and *Thomas F. Ryan, Jr.* for Transcontinental Gas Pipe Line Corporation

William K. Tell, Jr., Alfred C. DeCrane, Jr. and *James J. Flood, Jr.* for Texaco Inc.

James R. Lacey, Edward S. Kirby and *J. Harry Mulhern* for Public Service Electric and Gas Company

Robert C. Koury for South Jersey Gas Company

John R. Sailer and *John T. Miller, Jr.* for Elizabethtown Consolidated Gas Company

Robert W. Maris and *William T. Coleman, Jr.* for Philadelphia Gas Works, Division of United Gas Improvement Company

Sidney M. Schreiber for New Jersey Natural Gas Company

Donald Blanken, Vincent P. McDevitt and *Samuel G. Miller* for Philadelphia Electric Company

Scott Scammell for City Gas Company of New Jersey

William Gural, Maria D. Stroumtsos and *Felix G. Forlenza* for Board of Public Utility Commissioners of the State of New Jersey

Agnes Mae Wilson and *Robert L. Russell* for Staff of the Federal Power Commission

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

Ross, *Commissioner:*

This is a proceeding under Section 7 of the Natural Gas Act. Transcontinental Gas Pipe Line Corporation (Transco) seeks a certificate of public convenience and necessity to transport gas owned and produced by Texaco Inc., in volumes of 8,000 Mcf per day of firm gas and up to 16,000 Mcf per day of interruptible gas, from two points of receipt in the Gulf Coast area of Texas and Louisiana to a point of delivery on Transco's system near Texaco's Eagle Point Refinery located at Westville, Gloucester County, New Jersey, by means of Transco's main line facilities connecting these two areas. Texaco plans to convert the refinery from the use of fuel oil to natural gas in order to lower operating costs. The initial rates proposed by Transco are the same rates as those charged Sun Oil Co. for similar transportation service. The firm rate is the contract demand rate for Zone 3, exclusively of the average cost of purchased gas. The interruptible rate is 22 cents per Mcf. Overall, the service would earn an incremental return of over 12½ per cent.

In connection with the proposed service Transco requests authority for the construction and operation of additional pipeline facilities consisting of 10.5 miles of 8 inch purchase lateral in southeast Louisiana, two gathering meter and regulator stations at the points of receipt and a sales meter and regulatory station at the point of delivery. The additional facilities required are estimated to cost approximately $600,000. Other facilities originally requested in this proceeding have since been authorized by the order issued April 17, 1964, in

Transcontinental Gas Pipe Line Corporation, Docket No. CP64-96, 31 FPC 957.

On June 5, 1964, Presiding Examiner Dyer Justice Taylor issued an initial decision granting Transco's application subject to certain specified conditions regarding curtailments and priority of service. Transco, in its brief opposing exceptions, indicates that the conditions imposed by the examiner are deemed appropriate and are acceptable to it.

Exceptions to the examiner's decision were filed jointly by and on behalf of seven intervening local gas distribution companies[1] and by the Board of Public Utility Commissioners of the State of New Jersey, which adopted the exceptions and the reasons stated in the joint brief on exceptions filed by the distribution company intervenors. The Commission's staff, which supported the award of the certificate to Transco, did not except to the intermediate decision. By order of August 25, 1964, the Commission scheduled oral argument on the issues raised by exceptions to the examiner's initial decision. These issues were directed to whether the proposed transportation was required by the public convenience and necessity. In addition, the Commission raised *sua sponte* an issue relating to the nature of the transaction between Transco and Texaco and provided for the filing of briefs on this issue. Specifically, the issue raised was:

> Whether the arrangement between Texaco and Transco involves a sale of gas by Texaco to Transco for resale by the latter so that the producer should be required to secure a certificate.

At the oral argument and in the supplemental briefs, Transco and Texaco contended that the so-called commingling doctrine of the Commission had been rejected by both the Fifth and Eighth Circuits.[2] Moreover, they argued that this doctrine had been applied only to determine whether or not what was admittedly a sale by the producer in the first instance, was a sale for resale in interstate commerce. This situation is distinguishable, they point out, in that the transaction concededly is in interstate commerce. After describing the several transportation agreements previously approved by the Commission, these parties argued that public policy dictated against expanding the commingling doctrine to cases of this type.

Staff and the New Jersey intervenors[3] took a contrary view of the nature of the transaction between Transco and Texaco. In their view, the instant agreement comprised a sale in the field by Texaco to Transco, and a resale in Westville, N.J. by Transco to Texaco. Under the Commission's commingling doctrine, they indicate that physically a part of the gas initially delivered by Texaco to Transco will be resold by Transco to various of its wholesale customers served by its main line facilities. In support of this position, they note that Transco, under the agreement, bears the risk of loss while the gas is in transit, except for loss due to force majeure. The New Jersey intervenors argued various points indicating, in their opinion, why the proposed arrangement was not consistent with the public interest.

We conclude that the transaction between Transco and Texaco is a transportation agreement and that the public convenience and necessity requires certification of the proposed transportation service under Sections 7(c) and 7(e) of the Natural Gas Act.

---

[1] City Gas Company of New Jersey, Elizabethtown Consolidated Gas Company, New Jersey Natural Gas Company, Philadelphia Electric Company, Philadelphia Gas Works Division of the United Gas Improvement Company, Public Service Electric & Gas Company, and South Jersey Gas Company.

[2] *Lo-Vaca Gathering Company* v. *F.P.C.*, 323 F. 2d 190 (1964); *Amerada Petroleum Corporation* v. *F.P.C.*, 334 F. 2d 404 (1964).

[3] These parties are identified in footnote 1, *supra*.

The part of the Natural Gas Act covering the issue raised *sua sponte* is Section 7(c) which provides:

> No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extension thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations.

Considering the fact that the pipeline industry had evolved to a considerable extent by the time Congress enacted the Gas Act, it is noteworthy that the term "transportation" was specifically included. In the past, the Commission has approved several transportation arrangements of a type similar to that presented here. At the present time, there are 25 transportation rate schedules on file with the Commission by 13 different pipelines.

Under the agreement executed by Transco and Texaco, and filed herein as Exhibit No. 8 Transco agrees to transport for Texaco daily from points of delivery in the Gulf Coast area to the Westville plant in New Jersey, such quantities of gas on a firm basis as Texaco makes available to such delivery points up to 8,000 Mcf per day, and up to 16,000 Mcf per day on an interruptible basis. Departure from scheduled daily deliveries due to the inability of the parties to maintain precise control must be kept to the minimum and balanced out as soon as practicable. It is the intention of the parties that the daily deliveries of gas by Texaco for transportation shall approximately equal the amount of gas which Texaco shall receive at the New Jersey delivery point. Under Article 8 of the agreement, the parties recognize that the gas delivered by Texaco will be commingled with gas received from other sources in Transco's pipeline. However, the parties agree that the quantity of the gas delivered by Transco to Texaco shall be comparable to that initially delivered by Texaco. Article 9 provides detailed measuring requirements respecting both the quantity and quality of the gas delivered by Texaco to Transco and redelivered by Transco to Texaco. Of course, these contractual provisions do not control our jurisdictional determination.[4]

Transco is not liable for any gas gathering, occupation or production, severance or sales tax or taxes of similar nature presently or hereafter validly imposed. In addition, Texaco is obliged to reimburse Transco in the amount of any future tax validly paid by Transco incurred in connection with the proposed transportation. Under Article 10, the parties agree to share the loss of any gas resulting from force majeure. Otherwise, the agreement places the risk of loss with Transco. Texaco warrants clear title to the gas to be delivered to Transco and Transco warrants that the gas shall be free of all liens when delivered to Texaco. Nothing in the agreement purports to transfer title to the gas delivered by Texaco to Transco. Texaco receives no consideration whatever under the agreement. The only obligation is Texaco's obligation to pay the agreed rate to Transco in return for the transportation of gas of a specified volume and quality.

The terms of this agreement conform generally to other transportation agreements we have approved. Texaco simply desires to transport gas it owns and has developed to a point where it can economically use the gas. It therefore has entered an arrangement with one who has the facilities capable of transporting the gas. We conclude that in the light of the facts of this case, the instant situation does not involve a sale by Texaco to Transco.

---

[4] 26 FPC 606. The Commission's decision was recently sustained by the Supreme Court in *California* v. *Lo-Vaca Gathering Co., et al.*, 379 U.S. 366, Docket No. 46, *et al.*, decided Jan. 18, 1965.

Staff and the New Jersey Intervenors argue that our decision in *Lo-Vaca* requires us to view the instant transaction as one involving a sale by Texaco to Transco and a (nonjurisdictional direct industrial) resale by Transco to Texaco. In essence, Staff reaches this conclusion on the basis of commingling, *i.e.*, different molecules of gas being redelivered by Transco to Texaco. We disagree with this position.[5]

Initially, we note that the issue present in *Lo-Vaca*, *supra*, was whether arrangements, which concededly were sales, were in interstate commerce or for resale, and hence subject to Federal regulation under the Natural Gas Act. The issue here, on the other hand, is whether in the circumstances of this case there is any sales relationship between Texaco and Transco which is subject to Commission jurisdiction as such, or whether the proposed transaction is a transportation service under Sections 4, 5 and 7 of the Act.

We conclude that the mere physical commingling of Texaco's gas in Transco's lines with gas Transco has purchased for subsequent resale does not compel rejection of historic notions of bailments and require us to transform the transportation agreement into a succession of sales, by Texaco to Transco and again by Transco to Texaco. An essential feature of this transaction is that Texaco is the owner of the gas both at the beginning and the end of its journey from the wellhead to the point of ultimate consumption. It has merely contracted for conventional transportation arrangements subject to the Commission's jurisdiction. While transfers of gas from a producer to a pipline or from a pipeline to a direct customer may be treated as a sale for regulatory purposes in appropriate circumstances, we see no reason to do so in the circumstances of this case where it is clear that the intermediate transactions result in returning the gas to the original producer-owner and no jurisdictional question is involved. In reaching this determination we do not decide the status of the other types of transactions, such as that presented in the X-20 case.[6]

Lo-Vaca raised the possibility of a situation whereby substantial volumes of gas moving in interstate commerce would escape federal regulatory authority. Under the proposal, a pipeline would have been able to discriminate in favor of "nonjurisdictional" customers and could immunize a particular supplier from the reach of federal regulation. In these and in other ways, the Supreme Court noted, an attractive gap in the federal regulatory scheme would be created. Such a danger is not present in this case. The Commission has full and complete authority over the transportation agreement, and Texaco could not inject one Mcf of gas into Transco's interstate pipeline unless the Commission is satisfied that the transportation service is required by the public interest.

We have reviewed the record in this proceeding and conclude that the proposed service is required by the public convenience and necessity within the meaning of Sections 7(c) and 7(e) of the Gas Act. In our view, the presiding examiner properly treated these issues and we will therefore adopt this decision.

There are certain beneficial features of this transaction that we wish to emphasize. The present transaction precludes triggering of Transco's gas purchase contracts covering gas produced in Texas which might otherwise occur under a typical gas purchase contract. In addition, the instant arrangement allows the parties considerable operating flexibility in that specific leaseholds are not dedicated. The proposed service also will benefit Transco's other jurisdictional customers from a cost standpoint. The record indicates that the jurisdictional transportation revenues will exceed the associated incremental costs by about $600,000 annually.

---

[5] Footnote 4, *supra*. See also *F.P.C.* v. *Amerada Petroleum Corp., et al.*, 379 U.S. 687, Docket No. 585, per curiam opinion decided February 1, 1965.

[6] *F.P.C.* v. *Transcontinental Gas Pipe Line Corp.*, 365 U.S. 1.

None of the foregoing benefits would be available to Transco's jurisdictional customers if the proposed transaction were viewed as a sale from Texaco to Transco and a resale back to Texaco. The latter would be a nonjurisdictional direct industrial sale and hence immune from consideration in a rate proceeding.

On November 18, 1964, Public Service Electric & Gas Company, one of the intervenors in this proceeding, filed a document entitled "Offer of Settlement and Reasons for Acceptance". In this document, Public Service requested the Commission to order an informal settlement conference which would permit Public Service to offer a rate designed to meet the conditions of service satisfactory to Texaco and Transco. Public Service also suggested that it could offer a resale price of 42.9 cents per Mcf to Texaco. As Texaco correctly pointed out in its answer in opposition, Public Service's request is nothing more than an attempt to present an entirely new affirmative case almost one year after the record has been closed and the case briefed and submitted for decision. In addition the rate suggested by Public Service, even if reliable, is unsatisfactory to parties. For these reasons, we shall deny the relief requested by Public Service.

The Commission orders:

(A) The presiding examiner's decision and order issued herein on June 5, 1964, is hereby adopted as the decision of the Commission with respect to the public interest aspects of the application.

(B) The exceptions to the examiner's decision are hereby denied.

(C) The relief requested by Public Service Electric & Gas Co. in its "Offer of Settlement" filed November 18, 1964, is denied.

Commissioner O'Connor *concurs* in the result.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON APPLICATION UNDER SECTIONS 7(c) AND (e) OF THE NATURAL GAS ACT

(Issued June 5, 1964)

TAYLOR, *Presiding Examiner:* This is a proceeding under the transportation provision of Section 7 of the Natural Gas Act (52 Stat. 824 (1938), 15 U.S.C. Sec. 717(f)). Transcontinental Gas Pipe Line Corporation (Transco) seeks a certificate of public convenience and necessity under Sections 7 (c) and (e) of the Act authorizing it to transport natural gas for Texaco Inc. (Texaco) from the Texas-Louisiana Gulf Coast Area to the State of New Jersey, and to construct, install, and operate certain additional pipeline facilities in connection therewith.[1]

Transco is a "natural-gas company" as that phrase is used in Section 2 of the Act (52 Stat. 822 (1938), 15 U.S.C. Sec. 717(b)). It owns and operates an interstate pipeline system which extends from natural-gas supply fields in the Gulf Coast Area to New York City. Texaco owns natural-gas reserves in Texas and Louisiana and a refinery at Westville, Gloucester County, New Jersey, all located near Transco's transmission line. Texaco intends to convert the refinery operations from the use of fuel oil to natural gas in order to lower operating costs. The conversion is predicated upon the use of its own produced natural gas, as distinguished from that which would be supplied at increased cost by the local natural-gas distributor, Public Service Electric & Gas Company (Public Service), an intervener herein. Transco's application is designed to permit Texaco to accomplish the conversion as intended. The transmission line would bring Texaco's produced natural-gas supply to within 100 feet of an existing Texaco line, near Woodbury, New Jersey.[2] Texaco has not filed an application with this Commission for authority to construct the facilities which are needed to bridge the aforesaid gap and the Examiner finds, contrary to the contentions herein, that it has no jurisdiction to require such a filing.

---

[1] Its application was filed in Docket No. CP63-222 on February 11, 1963, and supplemented on April 9, 1963, May 23, 1963, and July 15, 1963.

The performance of the transportation is governed by a contract between Transco and Texaco dated February 7, 1963, as amended by letter agreement dated December 17, 1963.

In order to perform the proposed transportation service, Transco seeks authority, in general, to construct, install, and operate the following: (1) two 11-mile sections of 30-inch pipeline loops, one in Louisiana and one in Pennsylvania; (2) a compressor at an existing station in Mississippi; (3) 10½ miles of 8-inch transmission purchase lateral in Louisiana; (4) gathering meter and regulator stations in Louisiana and Texas; and (5) sales meter and regulator station in New Jersey. The total cost was estimated in the application, as supplemented, to be $4,858,000. As subsequently shown, however, the construction of the facilities requested in numbers (1) and (2) above has been authorized by the Commission. The cost of the remaining facilities is about $600,000.

The Examiner, for the reasons subsequently set forth, finds that approval of the application, as limited above and as conditioned herein, is required by the present or future public convenience and necessity.

The application was set for hearing under the shortened hearing procedure[3] by notice issued by the Secretary dated August 13, 1963. Such hearing was postponed due to the filing by distribution companies of petitions to intervene in opposition.[4] Texaco petitioned to intervene in support of the application. All such petitions were granted by order dated October 29, 1963. The Board of Public Utility Commissioners of the State of New Jersey (Board) filed a Notice of Intervention on October 25, 1963. All parties except City Gas entered appearances.

Pursuant to a Notice issued by the Secretary on September 30, 1963, the hearing was convened on October 29, 1963. After a brief postponement for the purpose of exploring the possibility of stipulations, the hearing was reconvened on November 12, 1963. On the same day an on-the-record conference under Section 1.18 of the Rules of Practice and Procedure was held and concluded, and the formal hearing commenced. The latter was concluded on January 29, 1964, after eight nonconsecutive hearing days.

No application for temporary authority pursuant to Section 7(c) of the Act has been filed.

Evidence was presented by Transco and Texaco in support of the application. Public Service and Elizabethtown Consolidated, on behalf of themselves and the distribution company interveners, presented evidence in opposition. Neither the Staff nor the Board of Public Utility Commissioners took a position at the hearing. Initial, answering, and reply briefs were filed by various parties. All interveners other than Texaco joined in support of the brief filed by Public Service in opposition to the application. In addition, the Board, Elizabethtown Consolidated, and New Jersey Natural filed separate briefs in opposition. Except for the installation of a compressor, Staff in its brief supports the application. Among other things, the applicant and Texaco rely upon two Sun Oil Company tariffs to demonstrate that the initial rates proposed herein are consistent with the public interest.[5] They also rely upon the Sun transportation agreements, and similar agreements approved by this Commission, as some support for their contention that the type of service proposed herein is required by the public convenience and necessity.

---

[2] 8,000 Mcf per day of firm gas service and up to 16,000 Mcf per day of interruptible gas service. Unless otherwise stated, all volumes are shown at a pressure base of 14.73 psia.

[3] 18 CFR 1.30(c) and 1.32.

[4] Public Service Electric and Gas Company (Public Service); South Jersey Gas Company (South Jersey); Elizabethtown Consolidated Gas Company (Elizabethtown Consolidated); City Gas Company of New Jersey (City Gas); Philadelphia Electric Company (Philadelphia Electric); Philadelphia Gas Works Division of the United Gas Improvement Company (Philadelphia Gas Works); New Jersey Natural Gas Company (New Jersey Natural). All of these interveners, including Public Service, are customers of Transco except New Jersey Natural which is a customer of South Jersey.

Included in the determination required by Section 7(e) of the Act are such elements as an adequate gas supply, adequate markets and facilities which are reasonable and feasible from the standpoint of cost and design, reasonable and feasible financing, and the economic feasibility of the project. In this case, the only real issue concerning the foregoing elements, as they are usually understood, is whether or not the proposed rates and terms of service will result in the proposal being economically feasible. The issues which are dispositive of this proceeding, and which have been extensively briefed by the parties, are as follows:

1. Texaco's Facilities—Jurisdiction..*Page 247*

Does the Commission have jurisdiction over the proposed transportation of natural gas by Texaco from Transco's main line to the former's refinery, all in the State of New Jersey?

2. Markets, End-Use, and Field Prices..*Page 248*

(a) Has Texaco furnished satisfactory proof as to the need for, and the economic advantages to it, of the proposed service?

(b) Is the end-use of the natural gas consistent with the principles found in *F.P.C.* v. *Transcontinental Gas Pipe Line Corp.*, 365 U.S. 1 (1960)?[6]

(c) Does the proposal herein result in a preemption of capacity as in the *X-20* case?

(d) Does the proposal herein constitute an "attractive regulatory gap" and weaken the Commission's control over field prices of natural gas?

3. Availability of Capacity..*Page 253*

(a) Does the Commission's order in Docket No. CP64-96 provide for the construction of sufficient firm pipeline capacity to provide firm transportation to Texaco as requested in the present application?

(b) Will the proposed interruptible delivery of an average of 9,000 Mcf per day improve Transco's load factor in a manner consistent with and required by the public interest?

(c) Will the proposal herein result in a preemption of "cheap expansibility" and "priorities of service"?

4. Rates and Economic Feasibility..*Page 258*

(a) Under its contract Texaco has no obligation to tender interruptible gas for transportation, and there is no provision in its contract giving Transco the right to file for an increase in the interruptible rate. Do these facts require that the proposed rates be found "just and reasonable" in this proceeding in order to protect existing consumers?

(b) Are the proposed rates and terms of service unduly discriminatory or preferential?

---

[5] Transco FPC Gas Tariff, Original Volume No. 2, Rate Schedules X-1 and X-11.

[6] Hereinafter sometimes referred to as the *X-20* case.

5. Other Public Interest Considerations........................Page 264

(a) Is Public Service unable to furnish Texaco's natural-gas requirements at a price which would warrant a change from its present fuel oil uses to the use of natural gas?[7]

(b) Would certification of the instant proposal create a precedent which would cause others to conclude similar arrangements to the detriment of distributors?

(c) Is the transportation agreement a method of avoiding state taxes? If so, is it so clearly against public policy as to require denial of the application?

(d) Does the Commission have a policy against the approval of transportation agreements between pipeline and industrial companies where the latter is also a producer of natural gas?

The contentions of the parties will be set forth in the discussion of each of the foregoing issues. First, certain operational facts will be set forth and those Section 7(e) matters considered that can be disposed of without substantial discussion.

CONTRACT PROVISIONS AND GAS SUPPLY

The contract between the parties was submitted with the application herein and denominated "Pro-Forma Rate Schedule X-37," and subsequently introduced in evidence as Exhibit No. 8. It was executed by the parties on February 7, 1963, and amended by letter agreement dated December 17, 1963. It governs all aspects of the transportation service proposed herein and is for a term of 20 years from the date of initial delivery, which shall be not later than September 1, 1964.

Texaco has its own natural gas available (1) in the South Clara Driscoll Field, Nueces County, Texas, and (2) near the tailgate of its Paradis Gasoline Plant, St. Charles Parish, Louisiana. Under the contract natural gas from these two locations, and from such "other point or points in Texas or Louisiana as may be mutually agreeable,"[8] is to be delivered to Transco for transportation to, and redelivery at, a mutually agreeable point on Transco's 12-inch Marcus Hook-Woodbury transmission line near Texaco's Eagle Point refinery. Title to the gas will always remain in Texaco. Transco must accept for such transportation the firm "contract transportation demand" of 8,000 Mcf per day. If Transco, in its sole judgment, determines that it has capacity available after fulfilling its other market commitments, it will accept for delivery up to an additional 16,000 Mcf per day on an interruptible basis. Even if capacity were available, Transco is not obligated to receive for transportation at any Texas delivery point a total daily volume in excess of 10,000 Mcf. The parties estimate that Texaco will deliver an average of 9,000 Mcf per day from the Texas and Louisiana points. However, Texaco is under no obligation to deliver any interruptible gas for transportation. There is no minimum bill associated with the interruptible service.

The maximum quantity of gas required to be available for delivery under the contract is 8,000 Mcf per day of 20 years, or about 58,400,000 Mcf. Texaco agrees that at all times during the 20 years it will maintain gas reserves, over and above reserves committed or subject to any other contract, sufficient to insure the availability of the 58,400,000 Mcf, less any quantity which shall theretofore have been transported by Transco to Texaco on a firm basis. No specific leases or reservoirs are dedicated to this service.

---

[7] The Examiner's affirmative finding on this issue obviates a finding on the policy issue presented by Transco's proposal to serve an industrial customer in Public Service's area of distribution. *Cf. Southern Natural Gas Company*, Docket No. G-19632, 25 FPC 925 (1961).

[8] Exhibit 8, p. 8.

In their briefs, no participant contended that Texaco's gas supply would be insufficient to service the 8,000 Mcf firm and 16,000 Mcf per day interruptible service for 20 years. Furthermore, no participant in this case contended that natural gas is in short supply in the areas in question in this case, even though the Presiding Examiner specifically raised the question. The Examiner finds that on the basis of this record Texaco has an adequate supply of gas to provide the foregoing firm and interruptible deliveries to Transco.

OTHER SECTION 7(e) MATTERS

Except for a $785,000 compressor unit, the briefs raised no issue concerning the location, cost, and design of the facilities by Transco. The financial ability of Transco to provide the necessary funds is not in issue. There is an issue concerning the interruptible rate and its effect on economic feasibility.

On April 17, 1964, 31 FPC 957, the Commission in Docket No. CP64-96 ordered that a certificate of public convenience and necessity be issued to Transco authorizing, among other things, the construction and operation of certain facilities proposed and described in the application in that proceeding. As subsequently shown, the April 17 order authorizes Transco to construct and operate the major portion of the facilities requested in this proceeding. As a result, there is no longer any issue concerning the need for the compressor unit. Also, the resolution of certain other Section 7 issues has been simplified. The participants stipulated that the Examiner could take official notice of the then pending application in Docket No. CP64-96.

A. *Location, Cost, Financing, and Design of Facilities*

In its application in this proceeding, Transco proposed to construct and operate the following additional pipeline and compressor facilities, at an estimated cost of $4,858,000, in conjunction with the transportation service for Texaco:

Description and cost	*Location*
10.82 miles 30 inch loop line, $1,270,955;	Southeast Louisiana Gathering System
11.08 miles 30 inch loop line, $1,783,539;	Marcus Hook-Woodbury Loop Line in the State of Pennsylvania
3,400 H.P. Compressor unit, $785,000	Existing Station 80 in the State of Mississippi
Franchise and Consents, General Overheads, Interest During Construction, and Contingencies, $437,717, exclusive of $95,400 allocated to the compressor	
10.5 miles 8 inch lateral, $502,239;	Connecting Southeast Louisiana Gathering System to Texaco's Paradis Plant
Gathering Meter and Regulator Stations, $45,075;	South Clara Driscoll Field and Paradis Field
Sales Meter and Regulator Station, $33,475;	Point of redelivery on Marcus Hook-Woodbury Loop Line

The construction and operation of the first three facilities was authorized by the April 17 order in Docket No. CP64-96. In its application in such docket Transco represented that if the application in Docket No. CP64-96 was "authorized prior to the authorization in Docket No. CP63-222, Transco [would] amend that latter application to remove therefrom the duplicate facilities which have also been included in this application." At this writing, no motion to amend the application as aforesaid has been filed. Accordingly, the order herein will deny Transco's application to the extent it requests such duplicate facilities.

As a result of the foregoing, there is presented for decision herein only a proposal to construct and operate (1) the 10.5 miles of 8-inch lateral in Louisiana ($502,239), (2) the gathering meter and regulator stations ($45,075), and (3) the sales meter and regulator station ($33,475). The estimated cost of constructing such facilities is about $600,000 ($580,789 plus a small portion of the total franchise and other expenses). The Examiner finds that the three proposed facilities enumerated in this paragraph, and the cost thereof, are reasonable and adequate and are required by the public convenience and necessity.

The three foregoing facilities will be financed initially through temporary bank loans. Long-term financing may be arranged at a later date as part of a future financing program of Transco. The proposed expenditures are relatively minor in relation to Transco's existing plant. No party has questioned the feasibility or appropriateness of Transco's plan of financing. The Examiner finds that Transco has adequate financial resources to construct the facilities proposed and that the proposed financing will not render unsound its corporate financial structure.

TEXACO'S FACILITIES—JURISDICTION

Public Service contends that the Commission must assert its jurisdiction and require Texaco to file an application for authority to construct and operate its connecting facilities. In the absence of such filing, and approval by the Commission, it states that no certificate should be issued to Transco. Section 1(b) of the Natural Gas Act provides that it shall apply to the "transportation of natural gas in interstate commerce." The Examiner concludes that the transportation from the redelivery point on Transco's line is merely an incident to the use by Texaco of its own gas supply and is not "commerce" within the meaning of the Act.

The natural gas transported for Texaco will be redelivered to Texaco at a meter station to be constructed by Transco on the latter's 12-inch Marcus Hook-Woodbury transmission line. Texaco has an existing 8-inch refinery lead-in facility which is located between 30 and 100 feet from the proposed meter station. Texaco proposes to construct the necessary facilities to connect Transco's 12-inch line to the 8-inch lead-in line. The latter is now used to return refinery products, such as oil and gasoline, which remain in a 16-inch main delivery line after Texaco delivers such products into another company's system for delivery to Linden, New Jersey. Texaco no longer needs the 8-inch line to return its products and will convert it to natural-gas service. Contrary to Public Service's contention, the Examiner finds that the 8-inch line is a part of Texaco's refinery facilities. Texaco will not sell any gas for resale or otherwise.

The point of delivery by Transco is about 4½ miles from the refinery. In traversing this distance the 8-inch line crosses both public and private property. The line will receive a continuous flow of gas from other states at pressures up to 250 pounds per square inch. (It will require approximately 50 to 70 psi at the discharge end at the refinery.) Public Service contends that these facts bring this case squarely within the principle established by *Federal Power Commission* v. *East Ohio Gas Co.*, 338 U.S. 464 (1950).[9]

---

[9] No certificate of exemption has been filed under the amendment to Section 1(c) of the Act showing that a State "commission has regulatory jurisdiction over [the] rates and service * * * and is exercising such jurisdiction * * *." (68 Stat. 36 (1954), 15 U.S.C. Sec. 717(c)). This section is referred to as the Hinshaw Amendment. Its purpose was to overcome the Supreme Court's decision in the *East Ohio* case, *supra*. See S. Rept. No. 817, 83d Cong., 2d Sess. (1954).

East Ohio owned and operated a natural-gas business solely in the State of Ohio. It sold gas through its local distribution systems. Most of such gas was transported from other states by interstate pipeline companies, one an affiliate of East Ohio. Inside the Ohio boundary these interstate lines connected with East Ohio's "large high-pressure lines in which the imported gas, propelled mainly by its own pressure, flows continuously more than 100 miles to East Ohio's local distribution systems." (338 U.S. at 467)

The court held such transportation to be in interstate commerce and subject to the Natural Gas Act even though East Ohio did not sell natural gas for resale. The transportation alone was sufficient. It also held that the facilities did not come within the provision in Section 1(b) of the Act making the Act inapplicable "to the local distribution of natural gas or to the facilities used for such distribution." The "facilities" for "local distribution" were held to refer to "equipment for distributing gas among customers within a particular local community, not the high-pressure pipe lines transporting the gas to the local mains." (338 U.S. at 469–470)

Public Service construes the transportation from Transco's line to the Texaco refinery as similar to the transportation by East Ohio to its local distribution systems for sale to consumers. In order for the analogy to be complete, it would have to construe the Texaco refinery as similar to East Ohio's local distribution system. In effect, therefore, Public Service erroneously considers transportation for one's own use the same as transportation for sale to consumers.

Staff "deems the small amount of construction required here to be an extension of Texaco's present facilities for which no certificate from this Commission is required." (Br. p. 28) The principles found in the applicable cases support the following conclusions in this case: (1) that interstate transportation will continue after gas is redelivered to Texaco for further transportation to the Eagle Point refinery; and (2) that upon such redelivery "commerce" within the meaning of the Natural Gas Act ceases.[10] The *East Ohio* case is inapplicable here because there "commerce" had not ceased.

This view is also supported by three reported Commission cases which recognized that own use transportation does not require certificate authorization. *Anchor Hocking Glass Corporation*, 2 FPC 930; *Jersey Central Power & Light Company*, 9 FPC 717; and *Montana Power Company*, 10 FPC 950.[11]

One further matter: Public Service cites the Commission's order in *Texas Eastern Transmission Corporation*, 11 FPC 211, 218, as further support for its position. There the Commission required Public Service to file a certificate application to construct an 11.3 mile lateral line which was to be used to transport purchased gas for use in the production of mix gas for further sale in "commerce" and not own use consumption. The order applies only to a situation where "commerce" has not ended and, therefore, is inapplicable to the instant case.

MARKETS, END USE, AND FIELD PRICES

Economic Advantages to Texaco

No sale is being proposed by Transco. Accordingly, the question of a market as usually found in a Section 7 case is not present. Texaco is simply using Transco's services to bring its own produced gas from the Texas-Louisiana Gulf Coast Area to its Eagle Point refinery in New Jersey. All parties deem it desirable and in the public interest that Texaco be permitted to utilize natural gas in its refinery. The central question is whether the pipeline company or the local distributor should supply the gas.

---

[10] See *The Pipe Line Cases*, 234 U.S. 548, 562 (1914); *Valvoline Oil Co.* v. *U.S.*, 308 U.S. 141 (1939); *Champlin Rfg. Co.* v. *United States*, 329 U.S. 29 (1946).

[11] The same conclusion is also reached in the unreported case of *Reynolds Metal Co.* See letter order of March 27, 1959.

The Eagle Point refinery manufactures a complete line of petroleum products and is one of Texaco's major refineries. It will utilize the natural gas, as blended with its refinery gas, to replace fuel oil as a fuel source in its refinery operation. All gas transported will be produced by Texaco and not sold to any purchasers. The refinery currently has a crude oil capacity of approximately 76,000 barrels per day. Its petroleum products include liquefied petroleum gas, several grades of motor gasoline, home heating oil, diesel fuel oil, and residual fuel oil. It also manufactures petrochemicals and two grades of aviation gasoline. The three major classifications of fuel consuming units are (1) gas engine driven compressor units, (2) direct-fired process heaters, and (3) direct-fired steam generators. The average fuel requirements for these units are equivalent to 34,000 Mcf per day of natural gas. Approximately one-half of such fuel requirements is presently supplied by gas produced as a by-product from refinery operations. The balance (equivalent to 17,000 Mcf per day) is met by residual fuel oil manufactured at the refinery. Existing refinery heaters are not designed to burn coal.

The natural gas desired herein will reduce substantially the necessity of burning the equivalent of 17,000 Mcf per day of residual fuel oil as a refinery fuel. The natural gas will be blended with refinery gases in the fuel gas mix drum and preferentially used in gas engine driven compressors and direct-fired process heaters. The average daily fuel consumption of the compressors and process heaters is approximately 22,000 Mcf per day.[12] Remaining supplies will be utilized in steam generation for prime movers and process steam. None of the 8,000 Mcf per day of firm gas will be utilized for steam generation. Only the heaters associated with one of the process units are equipped to burn both gas and liquid fuel. The heaters on all other remaining process units are equipped for gas burning only.

Texaco plans a fairly uniform take of interruptible gas[13] and intends to use it to displace the liquid fuel being burned in the steam generators, to the extent it is available. No one, however, has ever represented to Texaco that the interruptible service is to be on a firm basis. It will not remove its fuel oil facilities and will be able to shift to stand-by facilities on a few hours notice. Accordingly, it can from an operating standpoint tolerate a number of days of sustained interruption; but "operation for a sustained period of time on fuel oil tends to place the units in condition to where you cannot maintain the same efficiency as had you kept them on gas." (Tr. 545)

The fuel oil which will be displaced by Texaco's transported gas will be utilized to meet existing commitments of Texaco. In addition to using the displaced fuel oil to meet existing commitments to customers, Texaco desires to use its own produced gas as refinery fuel because the gross output of refined products will be increased and because the use of natural gas in place of fuel oil (1) will permit a reduction in the amount of plant equipment committed to fuel consumption, (2) improve combustion efficiency, and (3) eliminate certain items of operating and maintenance expense. These benefits will be considered seriatim.

In order to burn fuel oil as a refinery fuel, storage tankage is required. The proposed firm supply of 8,000 Mcf of natural gas per day from Transco will make a portion of such storage tankage available for other purposes and thereby reduce the amount of plant equipment committed to fuel consumption.

---

[12] The six gas engine driven compressors consume approximately 1,500 Mcf per day. The direct-fired process heaters have an average daily consumption of 20,500 Mcf.

[13] See pages 263, 264, *infra*.

In order to burn fuel oil efficiently, dispersion steam must be injected at the burner to atomize the fuel. Generally, fuel oil requires an increase of excess air over that required in burning natural gas. As a result, heating efficiency is reduced. The substitution of natural gas will require less excess air and combustion efficiency will be improved.

Fuel oil must be heated and circulated in order to keep the viscosity at a point acceptable to the type of burners installed at the refinery. If a firm supply of natural gas is available, a lighter grade oil could be kept in the lines (as a standby fuel) making it no longer necessary to incur the operating expense of heating the lines required when regular grade fuel oil is used. Less maintenance expense is required to keep the furnace burners and related equipment in efficient operating condition when natural gas is used as a refinery fuel.

No economic feasibility or cost study was introduced to show the dollar savings attributable to the foregoing advantages. As a result, Public Service contends that "Texaco has failed to prove the public interest requires or, indeed, even supports the granting of this certificate by neglecting to furnish satisfactory proof as to the economic advantages to it of the service it seeks." (Br., p. 25)

The decision to have its own produced gas transported for use in the refinery, instead of using locally produced fuels or in the alternative purchasing gas from Public Service, was made by corporate management on a broad company level. It involved many other departments in Texaco's integrated operation other than refining. Texaco considered its management work papers "highly confidential" and refused to produce them when requested to do so by Public Service (Tr. 528). Texaco's only witness was from the refinery department. Although he did not make an economic feasibility study, he testified, and the Examiner finds, that by utilizing natural gas Texaco would achieve approximately a 10 percent increase in combustion efficiency. Such increase in efficiency would be in addition to an increase in the capacity of the process heaters of two to three thousand barrels per day (Tr. 561).

The 10 percent increase in the combustion efficiency amounts to a 10 percent saving in the cost of liquid fuel being burned. The Eagle Point refinery is currently burning an average of 17,000 Mcf per day equivalent of fuel oil, or about 2,656 barrels.[14] This represents an annual consumption of fuel oil of approximately 970,000 barrels. The Examiner takes official notice that the "Daily Petroleum Price" section of the *Journal of Commerce and Commercial* shows the present cost of a barrel of Bunker-C fuel oil to be $2.35, assuming that no discount is given. On the basis of such cost, approval of the application would result in a savings of about $228,000 per year from an increase in combustion efficiency. The record does not permit of a finding in regard to the amount of savings which would result from the increased amount of refinery products, reduction in plant equipment, and elimination of certain items of operating and maintenance expense.

In response to Texaco's initial brief Public Service contended that the present price for a barrel of Bunker-C fuel oil is not in evidence. As subsequently shown in the "Pipeline versus Distributor" section of this initial decision, Public Service's own witness provided the basis for the Examiner's taking official notice of the posted petroleum prices in the *Journal of Commerce and Commercial.*

The Examiner finds that the decision to use natural gas was made after careful study and was based on the best judgment of its management. *Cf. American Louisiana Pipe Line Company*, Docket No. G–2306, *et al.*, Opinion No. 402, issued September 17, 1963, 30 FPC 698. The Examiner further finds that Texaco has proven by the facts of record herein (1) that it has a need for and will use firm and interruptible natural gas in the quantities set forth above, and (2) that an economic advantage will result to it if the service requested herein is approved.

---

[14] A barrel of fuel oil is equivalent to approximately 6.4 Mcf. The exact conversion factor might vary between 6.3 Mcf and 6.4 Mcf depending upon the Btu content of the respective fuels (Tr. 837–83.)

End-Use of the Gas and Preemption of Capacity

In *F.P.C.* v. *Transcontinental Gas Pipe Line Corp.*, 365 U.S. 1 (1961), Consolidated Edison Company (Con. Ed.) purchased natural gas from producers in Texas. It then contracted with Transco for the transportation of the gas to New York City. There it was to be used in Con. Ed.'s plant as boiler fuel in the generation of electricity. Transco's proposed rate schedule for such service was designated "X-20". The case is often referred to as the *X-20* case.

In the *X-20* case the usual Section 7 tests had been met. The Commission denied the application, and subsequently was upheld by the Supreme Court, primarily on three policy grounds, as stated by the Supreme Court at 365 U.S., page 5:

(1) "that the gas was to be transported for use under industrial boilers, this disposition being an 'inferior' use from the standpoint of conserving a valuable natural resource;

(2) "that authorization of this and similar direct sales to major industrial users would result in preemption of pipeline capacity and gas reserves to the detriment of domestic consumers competing for gas supply; and

(3) "that the effect of this sale, as well as the resultant increase in direct sales, would effect a general rise in field prices."

Con. Ed. contended that certification was in the public interest notwithstanding the foregoing because the use of a firm supply of natural gas would reduce the air pollution problem. It also contended that the policy considerations advanced by the Commission were outside the scope of a Section 7 proceeding, as held by the Court of Appeals in reversing the Commission. This was the principal question before the Supreme Court. It examined each of the policy arguments and held that they were of proper concern to the Commission. For purposes of analysis, the Court considered the three policy factors in two categories, as grouped by the parties, as follows:

> The first has been labeled the "end use" factor and reflects the Commission's concern that Con. Ed.'s proposed "inferior" use of gas under its industrial boilers would be wasteful of gas committed to the Commission's jurisdiction and, by the same token, would pre-empt space in pipelines that might otherwise be used for transportation of gas for superior uses. The second may be called the "price" consideration and involves the Commission's fear that this sale—which was executed at a price higher than the maximum fixed by the Commission in the producing districts here involved—would increase the price of natural gas in the field, thus triggering a rise in the price provisions in other contracts. (365 U.S. at 6–7)

After a consideration of the above, the Court held that although the Commission lacks a "comprehensive power to formulate a flat rule against sales for use under industrial boilers" it can "exercise a veto power over proposed transportation . . . when a balance of *all* the circumstances weighs against certification." (365 U.S. at 17) (Italic by the Court).

There is no contention here by any participant that natural gas from the areas in question is in short supply or that the proposed end use of the gas is an inferior use by Texaco within the meaning of the *X-20* case. In fact, one of Public Service's main points, as discussed subsequently, is that it should be permitted to serve Texaco the volumes proposed herein. Accordingly, it "does not oppose certification on the basis of the proposed end-use." (Br., p. 11) Nevertheless, it urges that the application should be denied because such "proposed service would involve the preemption of capacity which would otherwise be available for the use of domestic and commercial customers." (Br., pp. 11–12) The Supreme Court, however, limited its consideration to the preemption of "space in pipelines that might otherwise be used for gas for *superior uses.*" 365 U.S. at 7 (Underscoring supplied). There is no contention in this case that the gas is to be used for an inferior use. Therefore, the preemption point as asserted by Public Service has no validity.[15]

The primary basis for Public Service's reliance on the *X–20* case is its view that the proposal herein is no different from a purchase by an industrial company from a producer in the field. From this premise it argues that certain "plus" factors in the *X–20* case are not present here,[16] and that since it was not in the public interest to certificate the *X–20* case it is not in the public interest to grant approval of the instant proposal.

The premise, however, is faulty. This will be shown in the following discussion of the field price question.

Field Price Increase

Public Service contends that approval of this transportation agreement would constitute an attractive regulatory gap. In support of this point Public Service relies upon the following cases: *Texas Eastern Transmission Corp.*, 29 FPC 692 (1963) (the "Rayne Field" case); *Tennessee Gas Transmission Co.*, Docket No. CP61–106, *et al.*, Opinion No. 413, issued December 12, 1963, 30 FPC 1477 (the "Bastian Bay" case); and also the *X–20* case.

The agreement herein involves a proposal by a bona fide producer to use its own gas which was produced in the normal course of its business. As a consequence the cited cases are inapplicable because there is (1) no sale of gas as in the *X–20* case, and (2) no arrangement by which producers convey leasehold interests in natural gas fields (*Rayne Field* and *Bastian Bay* cases). The simple fact is that Texaco desires to use its own produced gas for its own economic use. Public Service, however, insists that unless some "price" or "value" is attributable to such gas, substantial gas reserves will move in interstate commerce at a "value" which is not, and should be, known to the Commission (Br., pp. 32–33). It appears that Public Service desires to compare the "value" with the "in-line" prices established for Louisiana and Texas Railroad Commission District No. 4. Such a comparison is immaterial to a decision herein. The Examiner concludes that effective price regulation does not, in this case, require a knowledge of the "value" of natural gas produced by Texaco for its own use.

Elizabethtown Consolidated refers to the *X–20* case and urges that the Commission consider the "end use" of the proposed service. Its point is limited to a contention that under the proposal herein there is no prohibition on Texaco from selling the gas when it receives redelivery in New Jersey. Public Service also refers to the fact that in the *X–20* case Consolidated Edison agreed not to resell the gas it purchased from producers in Texas. This resale contention will be considered in the "Pipeline versus Distributor" section of this initial decision.

---

[15] Even if it were alleged and found that the gas was to be used for an "inferior" purpose, the preemption argument would not obviate approval herein because Transco is willing to sell and deliver to any of the present customers, under its currently effective rate schedules, any quantity of gas which such customer may contract to buy and is also willing to construct the necessary facilities to deliver such gas over and above the facilities needed to provide the proposed service herein.

[16] Such as, (1) Con. Ed. had to take-or-pay-for 50,000 Mcf per day, (2) for 60 days each year the transportation would be interrupted and Transco would sell 50,000 Mcf per day to Con. Ed. for resale to consumers for peaking service, (3) the air pollution problem, and (4) Con. Ed.'s agreement not to resell any of the gas it purchased in Texas.

AVAILABILITY OF CAPACITY

Firm Service

No participant contended that Transco would not have adequate pipeline capacity to render the proposed firm transportation service for Texaco if the facilities proposed in the application were all approved. As shown, the major portions of such facilities have been approved in Docket No. CP64–96. In fact, the only pipeline construction now remaining to be authorized is an 8-inch lateral connecting Transco's line to Texaco's source of supply. Transco was also authorized in Docket No. CP64–96 to increase its service to existing customers by 53,663 Mcf per day, consisting of 43,845 Mcf per day of pipeline service, 8,818 Mcf per day of storage service, and 1,000 Mcf per day of liquefied natural-gas service. Although it was not authorized to render any service to Texaco, the effect of the approval in Docket No. CP64–96 is to authorize Transco to construct facilities which will have enough capacity in excess of the increased firm demands of other contract customers to provide the Texaco firm service. This is shown clearly by reference to the respective flow diagrams.

The proposed Texaco redelivery will be made from a loop line referred to as the Marcus Hook-Trenton loop line.[16a] Exhibit 16 in the present case is a flow diagram showing the operating conditions on such loop line when the system is operating at maximum *winter* day capability, with the then proposed 11.08 miles of 30-inch loop line installed. It was designed to reflect delivery by Transco of all firm obligations to its customers, including Texaco. The comparable exhibit in Docket No. CP64–96, which also includes Texaco, is Exhibit G attached to the application. No facilities in addition to the 11.08 miles of 30-inch loop line are shown on Exhibit G. The total of all the customer deliveries on the Marcus Hook-Trenton loop line shown in Exhibit 16 is shown as 488.339 MMcf. In Exhibit G it is shown as 488.445 MMcf.

Exhibit 17 in the present case is similar to Exhibit 16 referred to above but shows the operating conditions when the system is operating at maximum *summer* day capability. The comparable exhibit in Docket No. CP64–96 is Exhibit G–1A to the application. A similar total of all customer deliveries shown in Exhibit 17 is 239.299 MMcf. In Exhibit G–1A it is shown as 225.598 MMcf. The Examiner finds that as a result of the Commission's order in Docket No. CP64–96 Transco now is authorized to construct firm pipeline capacity sufficient to provide firm transportation service to Texaco in the amount of 8,000 Mcf per day.

Interruptible Service

As one of the main bases asserted for approval of its application Transco states that the proposal herein for interruptible service would utilize idle capacity and thereby aid it in operating its system at the highest possible load factor. Public Service, however, contends that Transco has not shown that the proposed interruptible delivery will improve its load factor "in a manner consistent with and required by the public interest." (Br., p. 4) In other sections of its brief Public Service has emphasized the word "required" in the statute. Such reference requires preliminary comment.

[16a] The Marcus Hook-Woodbury loopline previously referred to is a part of this Marcus Hook-Trenton loopline (Tr. 629).

In deciding whether or not the application should be granted, the Examiner must make a finding that the application is required by the present or future public convenience and necessity. The finding must be determined by weighing all the facts and circumstances of each case. It does not mean "indispensably requisite." *Transcontinental Gas Pipe Line Corporation*, 17 FPC 360 (1957).

Insofar as "transportation" only is concerned, the Supreme Court has held that the Commission can "exercise a veto power over proposed transportation [but] it can only do so when a balance of *all* the circumstances weighs against certification." (Italics by the Court.) *F.P.C.* v. *Transcontinental Gas Pipe Line Corporation*, 365 U.S. 1, 17.

It is within the framework of the foregoing that the load factor, and other contentions, are now considered.

Public Service contends that Transco has not supported its assertion that the proposal would utilize idle capacity because the record is devoid of "detailed information as to how this [interruptible] service was to be undertaken and as to the practical degree of interruptibility which was contemplated." (Br., p. 4) it complains that the record made at the hearing in regard to load factors was admittedly stale and prevented it from ascertaining if a sufficient "valley" was created by the failure of the firm contract customers in Zone 3, which includes New Jersey, to use their contract demands.[17] It proceeded, however, to develop figures from such evidence in an attempt to show that there was not a sufficient "valley" created in Zone 3 to service the Texaco interruptible service; that such service would have to use capacity in Zone 3 reserved for future firm customers; and that as a result the existing firm customers would be put into the position of subsidizing the transportation service.

Transco did not object to the use of such figures. In fact, it contended that figures from the same exhibit showed that a valley existed in Zone 3 as of April 1963 sufficient to service Texaco and its other interruptible deliveries. The Commission's order in Docket No. CP64–96 obviates a finding concerning either Public Service or Transco's conclusions based upon the April 1963 data. The order does, however, provide more recent data by which a determination may be made concerning the load factor issue. The Examiner has used certain exhibits attached to the application in Docket No. CP64–96 as the basis for the following findings: (1) that upon the completion of the facilities now authorized by the Commission's order dated April 17, 1964, in Docket No. CP64–96, there will be annual unused firm contract capacity in Zone 3 sufficient to serve the 1965 estimated interruptible transportation proposed for Texaco; and (2) that Transco's load factor will be improved. The facts will be developed in the general manner used by Public Service and Transco in their briefs.

The Zone 3 facilities for the proposed service are designed on a summer day basis. The summer day capacity required to serve Transco's firm contract customers in Zone 3, as approved in Docket No. CP64–96, is 1,227.8 MMcf.[18] Such figure is converted to a winter day basis by dividing it by the temperature factor of 94.7 percent. As a result, the capacity required on a winter day basis is 1,296.6 MMcf. The daily average capacity in Zone 3 would be 1,262.2 MMcf. On an annual basis this would be 460,707.0 MMcf.

---

[17] The problem arose as follows: As Supplement No. 1 to its application Transco filed "Exhibit N" entitled "Revenues, Expenses and Income." (Item B by reference.) This exhibit includes the data required by an applicant under Section 157.14(a)(16) of the regulations and, among other things, shows the estimated annual deliveries to its customers for a three-year period. This data, however, was filed in April 1963 and the hearing was held in November 1963 through January 1964. The data in Exhibit N was not brought up to date. Transco's attorney at page 622 of the transcript stated as follows:

> I would like to state also that the condition shown on Exhibit N to the application, which was filed back in April, are not the same conditions which have been proposed in the evidence presented by Transco in this proceeding.

The estimated 1965 annual purchases by all firm contract customers in Zone 3 (excluding Texaco) is 442,111.8 MMcf.[19]

By deducting the estimated requirement of 442,111.8 MMcf from the total annual volume of 460,707.0 MMcf, it is found that there is 18,595.2 MMcf available as a "valley" for non-firm or off-peak deliveries in Zone 3. This valley would then be reduced by the estimated interruptible transportation volume for Sun Oil Company of 9,125.0 MMcf (Tr. 624), which would then leave a remaining valley of 9,470.2 MMcf.

Transco has obligations under its GSS Rate Schedule to transport up to 4,692.5 MMcf into Zone 3 during the summer months for storage injection for customers in Zones 1 and 2 (Exhibit N, page 8, to the application in Docket No. CP64–96). This is an increase of 117.5 MMcf from the quantity referred to in the instant proceeding at transcript page 623 and in the briefs by Transco and Public Service. This reduces the valley created by the firm contract customers in Zone 3 to 4,777.7 MMcf. Texaco's estimated annual use of interruptible gas is 3,285.0 MMcf (Exh. 7, p. 1).[20]

Cheap Expansibility

Public Service contends that "Transco has preempted its 'cheap expansibility' in order to benefit Texaco to the detriment of its distribution customers." (Br., p. 13) The Examiner finds no merit to Public Service's contention because it draws no distinction between use of idle capacity for non-jurisdictional purposes and a use that is wholly jurisdictional. Public Service urges, in effect, (1) that the firm capacity should be treated as held in reserve for the future expansion needs of the present jurisdictional customers, and (2) that approval herein would not be in the public interest unless such customers were compensated presently for the preemption of such "cheap expansibility" by new jurisdictional customers. It relies upon *Mid-America Pipeline Company* v. *Federal Power Commission*, 330 F. 2d 226 (CADC), No. 17717, decided February 20, 1964.

---

[18] As shown in Exh. G–II to the application in Docket No. CP64–96:

	MMcf
CD–3	1, 203. 466
G–3	1. 396
OG–3	2. 605
X–11	29. 000
On acct. Tenn. Gas Transmission	(8. 615)
	1, 227. 852

[19] As shown in Exh. N to the application in Docket No. CP64–96:

	MMcf
CD–3	417, 597. 7
G–3	768. 3
OG–3	1, 490. 8
X–11	10, 585. 0
S–2	11, 670. 0
	442. 111. 8

[20] The Texaco and Sun annual interruptible uses are shown in Exhibit N to the application in Docket No. CP64–96 as 1,460.0 MMcf and 10,950 MMcf, respectively. The later testimony in Docket No. CP63–222 shows that the Texaco estimate was increased by 1,825 MMcf and the Sun estimate decreased by the same amount. Accordingly, the end result as to the "valley" in Zone 3 is the same.

The principle of "cheap expansibility" was first established in *City of Pittsburgh* v. *Federal Power Commission*, 237 F. 2d 741 (CADC). In that case the Texas Eastern Transmission Corporation (Texas Eastern) was authorized to abandon its Little Inch pipeline between Baytown, Texas, and Moundsville, West Virginia, as a natural-gas pipeline. The purpose of the abandonment was to make the Little Inch pipeline available for petroleum products. The company's system also consisted of a 24-inch Big Inch pipeline and a 30-inch Koscuisko pipeline. The latter had idle capacity. As a substitute for the natural-gas capacity in the Little Inch line, the Commission approved the transfer of its natural-gas load to the 30-inch Koscuisko line. The Texas Eastern system would then have operated at capacity but would have had no facilities available for expansion. (The order also authorized construction of (1) a necessary connecting line to the Koscuisko line (referred to as a "tie-line") and (2) additional compression facilities on the Koscuisko line.)

Certain consumers contended that as a result of the Commission's order the next block of expansion for them would require looping of the Koscuisko line which "would entail an increase in the rate base to gas consumers based upon the costs of [such] looping as well as the cost of the tie-line". (237 F. 2d at 750) The consumers asserted that they were entitled to the benefit of the less "expensive expandibility" then existing on the Koscuisko line. The court held that the Commission should have considered the consumer's contentions. It remanded the case to the Commission for that purpose, among others.

In the *Mid-America* case the applicant before the Commission was the Northern Natural Gas Company (Northern Natural). The Mid-America Pipeline Company (Mid-America) was an interstate common carrier of natural-gas liquids and subject to regulation only by the Interstate Commerce Commission. Northern Natural, in addition to its natural-gas pipeline system, owned a subsidiary company engaged in the extraction, transportation, and sale of liquid petroleum. Northern Natural requested authority to construct and operate additional facilities costing some $3,885,800 and to transport approximately 900,000 Mcf of gas per day to the extraction plant.[21] There, liquid petroleum gases would be extracted from the gas stream and the residual natural gas then returned to the main transmission line.

Among other things, Mid-America contended that the Commission's order would result in a non-jurisdictional business preempting the existing low-cost, unused capacity of the Northern Natural system; that the existing customers would eventually require such capacity; and that they would have to replace it at higher costs. This phase of the matter was the subject of a settlement agreement between Northern Natural and its utility customers. It provided, in part, for an additional 5.5 cents reduction in demand charges on a uniform basis in all of the zones in Northern's system and amounted to $1,000,000 per year. The Commission found that "this substantial reduction in rates [was] a satisfactory interim compensation for any loss of cheap expandability until such loss [could] be more accurately measured."[22] The "measurement" would be made in some future rate case. The court affirmed the Commission and thereby rejected Mid-America's argument that under the Commission's order Northern Natural would be enabled to improperly subsidize its liquid gas business by loading part of the extraction operating costs onto its jurisdictional natural-gas customers.

---

[21] As previously shown, the Commission in Docket No. CP64-96 has approved the construction of pipeline capacity sufficient to serve the 8,000 Mcf of firm transportation requested in this proceeding, and thereby eliminated from consideration herein all but about $600,000 of an estimated $4,858,000 in construction costs.

[22] *Northern Natural Gas Company*, 29 FPC 450, 451.

The *City of Pittsburgh* and *Mid-America* cases show that the principle of compensation for loss for cheap expansibility applies only where the idle firm capacity is to be used by a non-jurisdictional facility. Stated differently, the principle is inapplicable to the situation presented by either a new jurisdictional customer coming on the line or an existing jurisdictional customer increasing its contract demand. The reason is clear. In neither of such cases is there any doubt that the full allocated costs, based upon the latest rate proceeding, will be recovered by the new service.

Here, as pointed out by Transco, "the proposed transportation service for Texaco is wholly subject to Federal Power Commission jurisdiction . . . ." (Initial Br., p. 10) This fact is reflected in the initial rate proposed to be charged for the firm transportation service herein. It is precisely the same as the jurisdictional rate charged Transco's firm contract customers in Zone 3, exclusive of the cost of purchased gas. It will, therefore, provide the same revenue, minus the purchased gas cost, as would a sale for resale to an existing customer under the CD-3 Rate Schedule. Accordingly, all existing Transco customers will be benefited.

Furthermore, in the event the demand or commodity charges in Transco's CD-3 Rate Schedule are changed during the term of the contract, the prices to be paid by Texaco to Transco for firm service will also be charged similarly, with the commodity charge priced at the difference between the commodity charge in the revised rate schedule and the average cost of purchased gas.

Preemption of Priorities

(a) Excess Storage Gas and Interruptible Transportation Service: The record shows that the Texaco interruptible transportation service is to be granted priority over excess gas presently available to General Storage Service (GSS) customers. Public Service contends such fact is not consistent with the public interest.

If Transco has the capacity available, firm contract customers have the right to obtain excess storage gas over and above their daily firm storage entitlement. The excess GSS rate is 71.8 cents per Mcf, or if taken from the customer's storage balance, a 40.5 cents per Mcf service charge. (The rate for interruptible transportation for Texaco is 22 cents per Mcf.) The GSS gas is valued greatly by the customer because it can be substituted for peaking gases. In reply to Public Service's contention Transco stated that it would be its "policy to give priority to excess GSS service." (Reply Br., p. 15) The order herein will contain a condition to this effect.

(b) Firm Storage Service and Firm Transportation Service: Transco agreed to accept the following condition, which was first proposed in the Third Supplement to its application (Item D by reference):

> The certificate issued hereby is granted on the express condition that the firm and interruptible transportation services authorized herein shall be subject to curtailment and interruption if required to meet the existing or future contracted maximum daily delivery obligations of Transco for firm resale service to its customers.

It is not clear from the testimony whether or not Transco, by this condition, agreed to cut off firm transportation to Texaco in order to supply the storage customers firm requirements. As a result, Public Service contends that the condition "has almost no value to Transco's distribution companies." (Br., p. 17)

In its reply brief at page 15 counsel for Transco stated that it interpreted the condition in Item D by reference as requiring that both the firm and interruptible service to Texaco be interrupted "in the event that a force majeure situation rendered Transco otherwise incapable of rendering the contracted GSS service to its customers." The order herein will modify the condition set forth above to reflect this interpretation.

RATES AND ECONOMIC FEASIBILITY

The initial rates proposed herein are the same rates charged Sun Oil Company for similar transportation service. The firm transportation rates are the same, exclusive of the average cost of purchased gas, as the rates for the firm contract customers in Zone 3. The interruptible rate provides, at 100 percent load factor, nearly the same contribution to fixed costs, as does the firm rate.

As previously shown, facilities representing only about $600,000 of an estimated $4,858,000 in construction costs remain for consideration herein. The Examiner takes official notice pursuant to Section 7(d) of the Administrative Procedure Act (60 Stat. 241, 5 U.S.C. Sec. 1006) that 20 percent of estimated construction costs will, as a working estimate, equal or exceed the incremental cost of service. On such basis, the incremental cost of service here would be some $120,000. The annual *firm* revenue of $643,668 obviously is sufficient to meet any test of economic feasibility and also to provide a substantial contribution to existing system costs. (As subsequently shown, interruptible revenues are estimated to be $722,700. When the construction costs were estimated as $4,858,000, Public Service contended that the project might not be economically feasible because there was no assurance that Texaco would deliver any interruptible gas to Transco. The aforesaid findings render this contention moot.)

The Examiner finds, for the reasons detailed below, that the initial firm and interruptible rates proposed herein are consistent with the public interest and that the project would be economically feasible, on both an incremental and system basis, if no interruptible deliveries were made. No justification has been shown for requiring that "just and reasonable" rates for the transportation herein be determined in this proceeding.

Although Public Service's contentions concerning the interruptible transportation rate and associated economic feasibility argument are now moot, the contentions and associated facts will be set forth so that findings in connection with its other contentions may be made.

In a rate settlement approved by the Commission by order issued February 2, 1962 in Docket No. RP61-13, 27 FPC 187, Transco's system rate of return was not specified. However, at page 13 of its reply brief Transco states that the rate of return on the average investment per Mcf on its system was 6.32 percent. The estimated incremental rate of return attributable to the proposed service prior to the order in Docket No. CP64-96 was 12.64 percent. This rate of return was based upon the transportation of firm and interruptible gas at 100 percent load factor. A gross investment in facilities of $4,858,000 was used in the calculation. Interruptible operating revenues were estimated to be $722,700. Public Service challenged this latter figure because Texaco has no obligation to tender any interruptible gas to Transco for delivery. This will be the subject of further discussion.

Exhibit No. 7 shows the estimated annual volumes, revenues, and rates which provide the basis for the 12.64 percent rate of return. They are as follows:

Particulars (1)	Maximum demand (2)	Annual billing demand (3)	Annual deliveries (4)	Annual revenues [a] (5)
Rate Schedule X-37:				
Firm	8,000	96,000	[b] 2,920,000	$643,668
Interruptible			[c] 3,285,000	722,700
Total	8,000	96,000	6,205,000	1,366,368

[a] Rates used in computing revenues:

	Demand	*Commodity (cents)*
Firm	$3.94	9.0
Interruptible		22.0

[b] 8,000 Mcf multiplied by 365 days.

[c] 9,000 Mcf multiplied by 365 days.

The rates proposed by Transco, as shown above, are set forth as part of Transco's "Pro-Forma Rate Schedule X-37", designated as Exhibit 8 herein. They are the same rates as are contained in the agreements between Transco and Sun Oil Company for a transportation service by Transco from certain points in Transco's gas supply area, including Texas and Louisiana, to Sun's refinery at Marcus Hook, Pennsylvania. Both refineries are located along Transco's Marcus Hook-Woodbury loop line. Marcus Hook is located on the west side of the Delaware river, whereas the Eagle Point refinery is just to the east of that river.[23]

The Sun agreements are on file and effective as Transco's Rate Schedule Nos. X-1 and X-11 to Volume No. 2 of its FPC Gas Tariff. They provide, respectively, for rates of 22 cents per Mcf for the interruptible transportation service[24] and 22.04 cents per Mcf for the firm transportation service at 100 percent load factor. (The latter figure is obtained by converting the Zone 3 monthly demand charge of $3.94 per Mcf of demand and adding it to 9.09 cents, which is the difference between the CD-3 commodity charge and the average cost of purchased gas.) The interruptible rate is the same as the initial rate which was approved in 1948. The firm service rate varies with the rate applicable to Transco's resale customers in Zone 3 (CD-3), less the cost of purchased gas. Neither rate has been the subject of a just and reasonable determination under the Act. Both rates, however, have been included in the several Transco rate-settlement proceedings through the years. The latest Transco settlement orders appear at 14 FPC 1075, 24 FPC 888, and 27 FPC 187.

If all the proposed facilities remained for consideration in this case, and if the firm and interruptible rates were approved, the proposed service obviously would be economically feasible on an incremental basis since it shows that a return of 12.64 percent would be earned on the additional facilities at 100 percent load factor operation.

---

[23] In Docket No. G-704, Opinion 165, 7 FPC 24, Transco was authorized on May 24, 1948, to transport for Sun not more than 60,000 Mcf at 16.7 psia daily on an interruptible basis at 25 cents per Mcf.

In Docket No. G-2368, 13 FPC 1006, Transco was authorized on April 30, 1954, to transport 10,000 Mcf per day of gas on a firm basis from Sun's own supply to its refineries at Marcus Hook, Pennsylvania. On September 12, 1955, the said firm transportation service was increased to 20,000 Mcf per day (Docket No. G-9035, 14 FPC 333).

On November 17, 1959, an additional 9,000 Mcf of similar firm transportation service for Sun was authorized (Docket No. G-16603, *et al.*, 22 FPC 836).

[24] Rate Schedule X-1 provides for a rate of 25 cents per Mcf at a pressure base of 16.7 psia. Conversion of this rate to a pressure base of 14.7 psia, at which Transco's other rates are stated, gives a 22 cent per Mcf price.

When tested on an overall system basis, the proposed service make a substantial contribution to system fixed costs and, since the proposed service is wholly jurisdictional, will benefit all of Transco's customers. This is shown clearly by the following testimony of Transco's rate witness:

> As I previously mentioned the rate for firm transportation service for Texaco is the same as the currently effective rate for firm resale service in the same Zone 3 less the cost of gas included in such resale rate. The cost of firm service provided, therefore, is fully compensated for by the rate charged for such service and consequently is not disadvantageous to Transco's other customers.
>
> * * * * * * *
>
> Second, and very important, is the fact that the rate of 22.0¢ per Mcf for the interruptible transportation service, which is only 4/100 of one cent per Mcf less than the rate for firm service at 100% load factor, provides a substantial contribution to the fixed costs of Transco's system. My basis for making this statement is a comparison of the sales rate of 29.0¢ per Mcf for excess gas sold in the same Zone 3 under Transco's Rate Schedule E-3 with the 22.0¢ per Mcf for the interruptible transportation service herein proposed. Transco's currently effective E-3 rate after deducting the average cost of gas included therein, provided approximately 11¢ per Mcf to pay for the variable costs and makes a contribution toward the fixed costs of Transco's system. In Docket No. RP61-13, Transco's exhibits show that the variable costs on the Transco system, exclusive of cost of gas, amount to approximately 2¢ per Mcf. Thus the E-3 rate includes 9¢ per Mcf as a contribution to the fixed costs. The proposed interruptible transportation rate, using the same variable system cost of 2¢, therefore includes approximately 20¢ per Mcf as a contribution to the fixed costs on the system, this being 11.0¢ per Mcf more than the contribution provided in the E-3 rate, (Tr. 138-39)

There is no issue in regard to the propriety of the rate proposed for the firm transportation. A substantial question was raised concerning the interruptible rate.

Public Service challenges the reasonableness of the interruptible rate on the following grounds: (1) that the proposed transportation service differs in many material aspects from the Sun transportation agreement which, contrary to Transco's contention, cannot be used as a basis upon which to judge the reasonableness of the proposed rate; (2) that the benefits to Texaco are unduly preferential and discriminatory; and (3) that in the absence of a contract provision giving Transco the "right to file" for an increase in the interruptible rate the rates must be "just and reasonable *ab initio*" in order to give adequate protection to consumers (Br., p. 18).

The Sun Agreement

Public Service contends that circumstances have materially changed since the Sun transportation was certificated and therefore it cannot be a precedent for this proposed service. The main point is that without the Sun transaction Transco's initial certificate to serve the northeastern states might not have been issued since "it was hampered by the substantial dependence on sales of boiler fuel for load balancing purposes. The alleged major change since then "has been the initiation and expansion of underground storage in western

Pennsylvania which has removed the pressure for the load balancing devices which had to be adopted in the early stages of the pipeline expansion." (Br., pp. 22–23) The Examiner, however, has found previously that the need for a "load balancing device" still exists.

Public Service next contends that the form of gas dedication constitutes a "significant" difference between the Sun and Texaco agreements. The Sun interruptible volumes are supplied from reserves dedicated to Transco's system under gas purchase contracts.[25] No specific reserves are dedicated by Texaco and it has no obligation to maintain reserves for interruptible transportation and may discontinue offering any interruptible gas at any time. Public Service asserts that under the Sun contract the capacity dedicated to transporting the interruptible gas is available and useful for the life of the reserve; whereas under the Texaco contract Transco is obligated to construct and maintain gathering and metering facilities which may not be used in large part if Texaco elects not to offer any interruptible gas for delivery or its reserves are depleted.

In effect, therefore, Public Service contends that Transco needs the interruptible transportation in order for the project to be economically feasible and that under the terms of the agreement Texaco could refuse to deliver any interruptible gas to Transco, thereby resulting in a substantial loss of revenue and a consequent burden on ratepayers. Since most of the facilities proposed in this case have already been approved in Docket No. CP64–96, this contention is now moot. Furthermore, the fear that Texaco will not deliver the interruptible gas is unfounded. As shown previously, the Examiner has found that there is a need for both the firm and interruptible service. Also, under the Sun agreement, as shown in Rate Schedule X–1 to Transco's FPC Gas Tariff, Original Volume No. 2,

> Sun, at its option, may cancel [the] agreement during said twenty (20) year term set forth in paragraph "6" at any time by giving Trans-continental one year written notice prior thereto if Sun obtains "firm" delivery of natural gas from its own or other pipe line facilities at or near Marcus Hook.

Obviously, if Sun exercised its option Transco would incur a loss of revenue if it did not have a market for the gas it is required to purchase under the gas purchase contracts. This possibility is not materially different from the possibility that Texaco might tender no interuptible gas to Transco. It did not deter the Commission from approving the X–1 service. The Examiner finds that the form of gas dedication does not constitute a significant difference.

Public Service also contends that other differences between the Sun interruptible transportation agreement and the proposed service herein are such that the rates in the Sun agreement cannot be used as a basis for finding the instant rates consistent with the public interest.

It states that the Commission pointed out in Opinion 165 (7 FPC 24) that the Sun transportation feature would tend to alleviate a then existent fuel oil shortage which is not present today. In addition, it referred to the following testimony of its witness:

> He first outlined the conditions in the industry which no longer hold, mentioning "the great unsatisfied hunger for natural gas in the eastern

---

[25] The opinion which accompanied Transco's authorization to render the Sun service explained the matter as follows:

The gas to be transported for Sun Oil Company will be obtained from its natural gas reserves which have been committed to Trans-Continental under gas purchase contracts * * *. To the extent that natural gas is transported to the account of Sun Oil Company, Trans-Continental will be released from an obligation to take gas from Sun Oil Company under the gas purchase contracts (7 FPC 24, 34).

> market", "the twenty-year reserve life requirement", and the Commission taking "a restrictive attitude toward massive sales of gas for steam generation particularly in electric generating plants". He also pointed out "the comparatively low field price of gas in the face of coal and oil costs not too different from today", which obviously made the burning of gas as boiler fuel much more attractive than at present. (Br., p. 21)

Public Service notes that the quoted conditions related to Transco obtaining an initial certificate and states that the Sun transactions were apparently an essential feature of the Transco project if it were to succeed at all. As previously shown, however, one of the main reasons for the Sun service was to improve the load factor. The same reason prevails today. The Examiner finds that the other differences enumerated by Sun are not material to a consideration of the rate issue; and that it is proper to use the Sun agreement as a basis for finding the instant rates consistent with the public interest.

Right To File for Rate Changes

Public Service fears the situation presented by Transco's inability to unilaterally change the terms of the contract in the event this Commission in some later proceeding determines that the terms and conditions for interruptible service are unduly discriminatory or preferential.[26] It recognizes that the demand-commodity charges in the proposed firm rate automatically change with any change in the transportation component of Transco's CD–3 rates (Br., p. 23). It contends, however, that a "right to file" provision should likewise have been inserted as to the interruptible rate.

As a result of the *Mobile* principle, and the absence of Commission power to order a retroactive rate, Public Service contends that adequate protection for consumers "in this situation requires that the proposed rates be just and reasonable *ab initio*" (Br., p. 18). In support of this contention it cites *Texas Eastern Transmission Corp.*, 24 FPC 364, affirmed *sub nom. Ohio Fuel Gas Co.* v. *F.P.C.*, 296 F. 2d 594 (CADC); *El Paso Natural Gas Co.*, 26 FPC 687, 688; *Transcontinental Gas Pipe Line Corp.*, 21 FPC 141, fn. 3; and *Texas Eastern Transmission Corporation*, Docket No. G–12446, *et al.*, Opinion No. 378, 29 FPC 249; affirmed, 381 U.S. 392 (1965) (the Rayne Field case).

These cases support the proposition that where unusual circumstances exist, such as the probability that the initial rates would result in losses which would have to be passed on to the consumers, the Commission will conduct a careful examination into rates. In an ordinary certificate case, however, it serves no useful purpose to present the initial rate question in terms of the detailed requirements of Section 4 of the Natural Gas Act. *Texas Eastern Transmission Corp., supra*, at 366. The determination of "[j]ust how far examination into rates should be allowed in a certificate proceeding depends upon a careful weighing of all relevant circumstances. . . ." *El Paso Natural Gas Co., supra*, at 688.

The relevant circumstances here are (1) the rendering of similar interruptible service for Sun since 1950 at the rate proposed herein; (2) the inclusion of such rates in Transco's various rate settlements; (3) the fact that there is no "right to file" provision in Transco's interruptible tariff applicable to the Sun transportation; (4) the economical feasibility of the instant project without reference to the revenues from the interruptible service; (5) the lack of "high potential outlays for construction and large volumes of sales of gas" (*El Paso Natural*

---

[26] In *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332, the court held that the Natural Gas Act gives a natural-gas company no power to change its contracts unilaterally. Under Section 5(a), however, this Commission has power to modify the rates in a contract if in the public interest to do so. *F.P.C.* v. *Sierra Pacific Power Co.*, 350 U.S. 348.

Gas Co., supra, at 688); (6) the service is to be rendered out of excess capacity; (7) there is no obligation by Transco to deliver any volumes of interruptible gas; and (8) only 2 cents per Mcf of the total 22 cents per Mcf represent the variable cost of rendering the service. These facts support the finding, which is hereby made, that adequate protection for the consumers on Transco's line does not require that the proposed rates be found just and reasonable *ab initio.*

Unduly Preferential and Discriminatory

Public Service contends that Transco has failed to justify the proposed rate and the conditions of service at which it proposes to make the interruptible service available to Texaco (Br., p. 17). It has been shown previously that the initial rate proposed for the interruptible service is consistent with the public interest. The question now is whether the benefits to Texaco are unduly preferential and discriminatory as alleged by Public Service.

Public Service's basic complaint is that the flexibility offered to Texaco has never been offered to any of Transco's distribution customers. Different treatment is justified here, however, because of the material differences between the transportation services here considered and the sale of gas to the distributors for resale. Not all difference in treatment is illegal under the Act, but only unjust, unreasonable, or undue discrimination. *Michigan Consol. Gas Co.* v. *Federal Power Commission*, 203 F. 2d 895, 901 CA–10); *Carolina Pipeline Company* v. *Southern Natural Gas Co.*, Docket No. RP63–4, Opinion No. 423, decided March 30, 1964, 31 FPC 705. The Examiner finds that the differences set forth herein below, and elsewhere in this initial decision, are not unreasonable.

The Texaco normal interruptible service will be utilized in a manner similar to that which has recently governed the Sun transportation service (Tr. 533–534, 552). The number of days of curtailment were stated to be as follows:

> With respect to the interruptible transportation service however, there may be as many as three to five days of complete interruption during the first 12 months of the transportation service.
>
> In addition, there may be as many as 30 non-consecutive days on which the deliveries to Texaco might be partially curtailed based upon our 12 months past experience in transporting interruptible gas for Sun Oil Company.
>
> At this time there is no accurate method of determining the exact number of days on which the interruptible service to Texaco will be completely interrupted or curtailed. (Tr. 333)

Texaco contemplates substantial winter usage of interruptible gas. From this fact Public Service reasons that Texaco will be receiving interruptible service at a substantially lower cost than would be the case were it priced at the CD–3 rate under which interveners now purchase the bulk of their gas, and the storage rates for firm service also available to them. The record supports this contention. As shown above, however, the two classes of service are materially different. Furthermore, Transco has had no request from its distribution customers to buy interruptible gas at a rate which could be comparable to the Texaco interruptible transportation rate. As noted by Transco in its brief, Public Service might have had a valid argument if Transco had refused to sell interruptible gas "to its customers at a comparable price and under comparable terms and conditions. . . ." (Reply Br., p. 20)

Public Service also alleges that the terms of the agreement result in unjust benefits to Texaco because, among other reasons, Texaco can reduce its takes under the firm portion to 5,200 Mcf per day and can reduce its interruptible takes to zero. The contention that Texaco may take only the minimum firm quantities, and that it may not offer interruptible gas for delivery is based upon speculation only. The substantial evidence of record shows that Texaco has a need for, and will use, all the firm and interruptible gas it has requested Transco to transport.

OTHER PUBLIC INTEREST CONSIDERATIONS

Pipeline versus Distributor

Public Service vigorously contests approval of the instant application because it would allegedly remove Texaco as a potential customer thereby causing it to lose certain valuable cost benefits associated with the sale of interruptible gas.[27] In effect, it urges that as matter of policy a gas distributing company should not be required to compete with its own pipeline supplier for wholesale or industrial business within that area, even though the industrial customer proposes to use its own produced natural gas. The reason advanced by Public Service for this policy, and the usual reason in pipeline versus distributor cases, is to assist the distributor in improving its load factor, thereby reducing the unit cost of gas and enabling it to maintain lower rates for its customers. *American Louisiana Pipe Line Co.*, 20 FPC 575, 588, 592; *Southern Natural Gas Company*, 25 FPC 925, 926. Public Service also contends that certification of the proposal herein would create a precedent which would cause others to conclude similar agreements and thereby increase the loss of cost benefits to itself and other distributors.

Elizabethtown Consolidated was primarily concerned with the authorization of transportation service for the producer-owner of gas for "its use *or distribution of gas* in the service area of a local distributing company." (Br., pp. 3–4; italic supplied)[28]

Transco takes the position that this case does not present the issue of distributor versus pipeline because Public Service is *not* ready, willing, and able to furnish Texaco's natural-gas requirements at a price which would warrant a switch by Texaco from its present fuel oil uses to the use of natural gas.[29]

Staff also takes the position that there is no distributor versus pipeline issue in this case. It contends that the price Public Service "would charge is uncertain" and therefore "Public Service has not met the proof required" by the Commission in the *Southern Natural* case, *supra* (Br., p. 19).

Public Service construes Staff's position as requiring Public Service to prove that it should be authorized to make the service for Texaco. It states that it has no competitive alternative application for this service, and that the burden of proof does not shift to it. Elizabethtown Consolidated also referred to Staff's position as shifting the burden of establishing public convenience and necessity to Public Service. No citation of authority is needed for the proposition that the burden of proof does not shift. However, the burden of going forward with the evidence does shift. This was the point made by Staff in its brief, and by the Commission in the *Southern Natural* case, *supra*.

---

[27] In view of the finding herein below that Public Service could not offer Texaco an "attractive" price for the volumes Texaco needs (Tr. 779), it is immaterial to a decision in this case that Public Service would receive certain cost benefits were it to provide the service. (The extent of such cost benefits was the subject of conflicting and imprecise testimony. See Public Service's brief at pages 3 and 4, Texaco's reply brief at pages 6 and 7, and Tr. 771, 804, 806, 825, 845–846.)

[28] The application herein request authority to transport Texaco-produced gas for Texaco's own use. Authority to transport gas to Texaco for resale is not requested and will not be approved. Contrary to Elizabethtown Consolidated's position, approval of transportation of gas for Texaco's own use is in effect a prohibition on Texaco from selling all or part of the gas it proposes to have transported. No condition to this effect need be attached. See order issued March 25, 1964 in *Sabine Pipe Line Company,* Docket No. CP64–97, 31 FPC 696. Accordingly, Elizabethtown Consolidated's contention that Texaco may resell the gas to a chemical company, or others, will not be considered further.

[29] If such an issue were presented, Transco states that "the Commission might be faced with a difficult decision. *Cf. Southern Natural Gas Company,* Docket No. G–19632, 25 FPC 925 (1961)." (Transco's Initial Br., pp. 15–16)

In that case Southern sought a certificate of public convenience and necessity authorizing it to commence interruptible service to two industrial customers in Savannah, Georgia, and to install additional compressor facilities for this purpose. The Commission upheld the Examiner's denial of Southern's application to serve the two industrial customers but granted its request for a certificate to construct additional compressor facilities on condition that Southern make the necessary connections with the local distributing company so that the latter might render the service required by the two industrial customers. In denying the application by the pipeline to service the two industrial customers, the Examiner referred to the distributor's rates and revenue considerations and, after finding that from the customer's point of view the economics would seem to favor supply by the distributor, stated as follows:

> The record contains no evidence that the customers would not willingly connect with and take service from [the distributor], if Southern were not certificated, and if [the distributor] felt free to, and did, offer service. (25 FPC at 933)

The Examiner's decision was adopted as the decision of the Commission with the observation that neither the Examiner nor the Commission was to be understood as establishing, as a matter of principle, that in all cases an industrial load should be served by the distributor rather than the interstate pipeline. The Commission stated that it would "continue to consider each case on the merits as it arises and make the determinations which are commensurate with the facts and law applicable thereto." (25 FPC at 927)

New Jersey Natural contends that the fact the customers in the *Southern* case, *supra*, were willing to buy the gas from the distributing company, and that here Texaco is not so willing, is no distinction. The important point, according to New Jersey Natural, is the impact on the distributing company. This flies in the face of reality. Obviously, an industrial company will not willingly buy gas from a distributing company if the gas is not reasonably priced. Furthermore, under the findings herein, an industrial company would have to show by substantial evidence, not by "blandly" making a statement as feared by New Jersey Natural, that the gas is not reasonably priced.

In this case the economics favor the use by Texaco of its own gas. The record shows that Public Service is unable to sell natural gas to Texaco at a price which is economical enough to justify it using gas purchased from Public Service, rather than fuel oil, as a refinery fuel. Texaco established that Public Service did not offer it a reasonable price at any time during the negotiations from 1951 to 1962, and that the present tariffs contain the same unreasonable prices. This evidence was sufficient to shift the burden of going forward with the evidence to Public Service. It attempted to meet this burden (1) by proving that from the standpoint of gas supply and other considerations it was ready, willing, and able to render the proposed service,[30] and (2) by contending that if it were provided specific information concerning the use of the volumes referred to herein, it might be able to offer gas service at prices which might be "attractive" to Texaco (Tr. 779). There is no support in the record for the second point. First, it is not clear from this record whether or not Public Service could lawfully file a special tariff for the Texaco service only. Secondly, this record shows that even if Public Service were permitted by the Board of Public Utility Commissioners to sell the gas at cost, the price to Texaco would not be economical enough to justify a switch from the use of fuel oil to natural gas. As a result, this case does not present the broad policy issue posed by Public Service. The history of the parties' negotiations, and the related economics, will now be set forth.

---

[30] The record shows that Transco has the necessary volumes available for sale to Public Service for it to render the service to Texaco.

History of Negotiations Between Texaco and Public Service

In April 1951, Public Service and Texaco representatives met at the Eagle Point refinery to explore the possible use by Texaco of natural gas during the off-peak period of April through October. No specific proposal was made. Texaco stated that based on 1950 figures the use of natural gas might range from a low of about 600 Mcf per day in June to about 4,500 Mcf per day in September. Texaco indicated that a gas price "to be attractive should be lower [by five cents per barrel] than the equivalent of [New York] harbor barge prices then quoted by the Texaco representatives as $2.30 per barrel of Bunker-C oil." (Tr. 779, 874) No agreement was reached. Negotiations were terminated. Public Service stated that it would be glad to hear of any other "thoughts" that Texaco had on possible usage of natural gas at the refinery (Tr. 779).

In early February 1955, Texaco inquired of Public Service as to the possibility of supplying firm service in the amount of about 7,000 Mcf per day of natural gas throughout the year. At this time the standard price of Bunker-C oil, f.o.b. New York harbor, was $2.35 per barrel. Public Service's witness stated this price for the record using as his source the "*U.S. Journal of Commerce*" (Tr. 868).[31] On February 7, 1955, Public Service met with Texaco. The meeting developed the following areas of understanding:

> 1. Texaco might ask us to supply from 2,300 Mcf to 12,300 Mcf of natural gas on a maximum use day. The minimum use was estimated at 50% of the maximum daily use.
>
> 2. Natural gas, if available, would be most useful to Texaco at a pressure of 80 pounds per square inch.
>
> 3. Texaco's request, if made, would be for gas on a firm basis (Tr. 780).

Public Service offered to provide firm gas service to Texaco at a price of approximately 94 cents per Mcf on the basis of 1,040 Btu's per cubic foot of gas. The price per liquid barrel equivalent of fuel oil would be approximately $5.78 (Tr. 838). No agreement was reached.

In March of 1961, Texaco requested Transco to provide transportation service for it from its gas reserves in the Gulf Coast Area to the Eagle Point refinery. Transco advised Texaco that under its policy it would first notify Public Service because the latter was the natural-gas distributor in whose franchise territory the Eagle point refinery was located.[32] Such notice was given in April of 1961. Public Service then advised Transco that its representatives would discuss with Texaco the possibility of Public Service furnishing a supply of gas for Texaco's refinery.

In April of 1961, Public Service discussed with Texaco the possibility of furnishing natural gas to the Eagle Point refinery at a pressure of 60 pounds per square inch. Texaco indicated that firm gas would probably not interest them because the price of approximately 94 cents per Mcf, the same as in 1951, was considered to be too high for the use which Texaco had in mind at that time. Texaco, however, indicated its probable requirement on an interruptible basis might be as follows:

---

[31] It is obvious that by "*U.S. Journal of Commerce*" the witness meant the *Journal of Commerce and Commercial* circulated daily in New York City. No objection was made to the witness' use of this source. The Examiner takes official notice that in the same publication for January 28, 1964, the date that Public Service's sales witness testified, the price of Bunker-C oil f.o.b. New York harbor was $2.35 per barrel, assuming no discount. At the present time (April 30, 1964) the similar price is also $2.35 per barrel.

[32] Public Service's commercial annd industrial sales manager did not recall any instances where Transco has attempted to serve an *existing* industrial customer of Public Service (Tr. 836).

Maximum hourly, 381 Mcf
Maximum daily, 9,143 Mcf
Mcf per month, 164,571 Mcf based on 60% load factor.

In May 1961, Public Service met with Texaco in an effort to agree upon the sale of gas to Texaco under Public Service's ISG (Interruptible Rate Schedule). At that time the price of interruptible gas was 4.5 cents per therm. The Mcf equivalent is about 47.3 cents per Mcf at 1,048 Btu. The equivalent price per standard barrel of liquid fuel oil would be about $2.84 (Tr. 842).

In June 1961, Texaco wrote to Public Service stating that the fuel situation had been reviewed and it had been found uneconomical for Texaco to consider the purchase of interruptible gas from Public Service at that time. In January 1962, Public Service called at the Texaco plant and discussed the possibility of Texaco's use of interruptible gas. About February 1962, Texaco advised Public Service that it was not interested.[33]

At some time subsequent to April 1961, Texaco informed Transco that Public Service had offered to furnish an interruptible service at a price of 4.5 cents per therm but that such offer was not accepted because Texaco found it to be uneconomical and had a company policy of utilizing its own products whenever feasible. Transco then resumed its negotiations with Texaco which led to the agreement between Transco and Texaco which is the subject of this proceeding.

Evidence was introduced which established that the foregoing prices for firm and interruptible service are approximately the same now as they were in 1961.[34] The Examiner finds that at this point Transco had established a *prima facie* case showing that Public Service could not offer Texaco an "attractive" price (Tr. 779). Accordingly, the burden of going forward with proof that it could offer an "attractive" price to Texaco shifted to Public Service.

In an effort to excuse its failure to meet this burden Public Service contends, in effect, (1) that its tariffs do not provide the only prices at which it can, and is willing, to negotiate with Texaco since it could file a special contract for only the Texaco service with the Board of Public Utility Commissioners for the State of New Jersey; (2) that if it had been permitted to initiate a review of its rate structures in the light of the problems existing at the Eagle Point refinery, and the need for both the firm and interruptible gas referred to herein, it might have been able to offer Texaco an attractice price and thereby meet its burden of going forward with the evidence; and (3) that it was unable to do so because Texaco neither requested it to consider supplying all the aforesaid volumes, nor supplied it with sufficient and meaningful data, either prior to or during this proceeding upon which it could initiate a rate review.

---

[33] The foregoing shows that at no time during their negotiations did Texaco request Public Service to consider supplying it with 8,000 Mcf per day of firm service *and at the same time* an average of 9,000 Mcf per day of interruptible service. The largest supply discussed for any one sale was 9,143 Mcf per day of interruptible gas. As subsequently shown, Public Service contends that it could design attractive rates for Texaco based upon an average sale of 17,000 Mcf per day.

[34] Exhibits 9 and 10 are Public Service's natural-gas tariffs which became effective on February 1, 1961, and October 30, 1963, respectively, insofar as "Large Volume" and "Interruptible" services are concerned. The rate found in the present interruptible tariff amounts to the same 47.3 cents per Mcf which Texaco rejected in 1961. The present tariff for large volume firm service has the same block charges per therm as does the similar tariff which was in effect in April 1961, and which amounted to about 94 cents per Mcf.

The Special Contract

Public Service presently has no special contracts or rate schedules which are operative solely between Public Service and a particular individual customer and, insofar as its industrial and commercial sales system manager knows, it has never had such a special contract. In order to meet the particular needs of some customers, and to sell gas competitively, it has reviewed its rate structure and modified its rates to encourage gas usage for air conditioning and to provide economical heating and air conditioning service for large apartment houses and office buildings, among others. It has also established general rate schedules to meet customer needs for interruptible and off-peak use of gas. Its rate reviews are made whenever there are special or unusual problems presented in an industry.

Public Service's industrial and commercial system sales manager considers Texaco to be a potential customer because to him, "as a salesman, any large industrial enterprise is a potential customer for more of our service." (Tr. 854) It was his opinion, however, that Public Service needed more data before it could undertake a meaningful review of its rates in an effort to offer Texaco an "attractive" price. It was also his opinion that Public Service could not lawfully establish a special contract rate for service of natural gas to Texaco unless "it were in the form of a rate available to other customers in the same circumstances and approved by the Board [of Public Utility Commissioners]." (Tr. 876).

Public Service's counsel, however, disagreed and stated that under the applicable law Public Service could file a special contract with the Board for one customer. Counsel for Elizabethtown Consolidated stated that the Board by special letter had required all gas companies to file their interruptible gas contracts and that Elizabethtown Consolidated had filed 13 or 14 such contracts. The Examiner indicated that the matter was not free from doubt and requested the concerned parties to cover the subject in briefs. The briefs contained no citations of authority on this point. Furthermore, the Board of Public Utility Commissioners, which would logically be in a position to know whether or not it could lawfully consider a special contract between Public Service and Texaco for gas service, did not discuss the matter at all. The record does not permit of a finding that Public Service can lawfully file a special contract containing firm and interruptible reduced rates for Texaco only.

Even if it were assumed that the Board of Public Utility Commissioners could, and would, approve a class rate which would permit Public Service to sell gas to Texaco at cost, this record shows that the price would still be within the area rejected by Texaco's management as unattractive.[25]

Texaco has shown by competent evidence that it needs the 8,000 Mcf per day of firm service in order to accrue many of the economic benefits envisioned by a switch to natural gas. There is no support whatsoever in the record for the implication at pages 27 and 28 of Public Service's brief that Texaco would be just as well off by using interruptible service for all or part of the firm 8,000 Mcf per day. No further review of Texaco's refinery operation directed to allocating all or part of the 8,000 Mcf to interruptible service is warranted on this record. The record also shows that Public Service would have to increase its estimated annual firm contract purchases by nearly the full 8,000 Mcf per day in order to supply the Texaco firm service. Under Transco's contract-demand rate in the 3rd Zone (CD–3) the average charge per Mcf at 100 percent load factor is 38.7 cents. At cost, therefore, Public Service would have to sell the gas to Texaco at 38.7 cents per Mcf, plus 14.0625 percent for New Jersey gross receipts and franchise taxes (as subsequently shown), for a total of 44.1 cents per Mcf. At the conversion factor of 6.4 the equivalent barrel of Bunker-C fuel oil would be $2.82.

---

[25] The Commission will not lightly disturb a management decision made, as here, after a study of all available forms and sources of energy and based on the best judgment of its experts. *American Louisiana Pipe Line Company*, Docket No. G–2306, *et al.*, Opinion No. 402, decided September 17, 1963, 30 FPC 698. This is especially so where, as in this case, the record shows that substantial benefits to all of Transco's customers will result from approval of the application.

The CD–3 commodity component is 25.7 cents per Mcf. Assuming, without deciding, that Public Service would sell all the interruptible gas at 25.7 cents, the total of the commodity cost plus applicable gross receipts and franchise taxes would be 29.4 cents.[36] At the conversion factor of 6.4, the price per equivalent barrel of Bunker-C fuel oil would be $1.87. The weighted average of 44.1 cents per Mcf for firm gas and 29.4 cents for interruptible gas is 36.32 cents. Using the conversion factor of 6.4 cents, the price of an equivalent amount of fuel oil is $2.32 per barrel. As previously shown, the price at this time for a barrel of Bunker-C fuel oil f.o.b. New York harbor is $2.35 per barrel. Even a sale at cost plus taxes, therefore, would not be within the range of prices considered by Texaco to be "attractive."[37] Furthermore, and most important, it is extremely doubtful that Public Service would be permitted to sell at cost plus taxes. To do so, it would not only have to forego fixed costs and profit, but also the recovery of the cost needed to construct two to four miles of transmission line necessary in order to render such service.

The Examiner finds that as a result of the basic economics shown in this record, Public Service could not in the foreseeable future offer an "attractive" rate to Texaco; that the fact Texaco did not request Public Service to consider supplying all the volumes requested herein, or provide it with complete refinery data concerning the use of such volumes, is immaterial; and that Public Service has not met its burden of going forward with evidence sufficient to meet the *prima facie* case established by Transco. The remaining public interest considerations urged as requiring denial of the application are the establishment of a detrimental precedent, and competition bottomed on tax avoidance.

Detrimental Precedent

Public Service argues that if this application were approved, a precedent would be established which "would cause other large energy-using industries to take steps to acquire blocks of natural gas and call upon pipeline companies to transport the gas." (Br., p. 20) in support it cites the following language by the Commission in the *X–20* case:

> Certainly, if we were to grant this request we would soon be confronted with many requests of the same character; and granting the X–20 proposal we would have no fair or rational basis for denying similar such requests. Likewise, the authorization of this and like proposals would preempt for this usage capacity which would otherwise be available to meet more urgent and widely beneficial public needs, * * *. (21 FPC 138, 141)

Public Service contends that such preemption of the distributors' market would (1) decrease its energy sales to existing customers, (2) reduce the potential sales market needed for future company growth, and (3) deprive political divisions within New Jersey of its revenues derived from the sale of gas to industry. Public Service's fear that approval of the instant application would result in a loss of existing customers and future markets is based upon the obvious point that customers will enter into transportation agreements if they can save money by doing so.

---

[36] 14.025×25.7=3.7 cents. The total cost and taxes=29.4 cents.

[37] Five cents lower than the equivalent of New York harbor barge prices for Bunker-C oil (Tr. 779,874).

Public Service's concern, however, is caused by a failure to properly distinguish between an industrial company that is daily engaged in the production of its own gas, on the one hand, and service to industrial companies who through direct purchases in the field obtain sufficient natural gas of their own, on the other hand. The decision herein is limited to approval of the situation where there has been no direct producer sale in the field to any industrial customer. The precedent argument advanced by Public Service must be considered within the narrow confines of such approval. Furthermore, as stated by the Commission in the *Southern* case, *supra*, each case is to be considered "on the merits as it arises. . . ." The Examiner finds that no issue is presented in this proceeding by Public Service's allegation that chemical companies and other industrial firms on the eastern seaboard will go into the field and make direct purchases of gas reserves for transportation if the Texaco transportation service is certificated. Policy issues which may be presented by such arrangments must await adjudication in subsequent proceedings in which direct producer sales are a part of the applicant's proposal.

Transco now has two contracts with refinery companies for transportation of natural gas—Sun and Texaco. There have been about six requests from other oil refinery or industrial companies for transportation service. Transco's vice-president in charge of marketing, who was presented as a policy witness, was asked whether Transco was willing to offer to others a transportation service comparable to the Texaco service, if through discovery, purchase, assignment, or succession they obtain sufficient natural gas of their own in the field. His unchallenged answer was as follows:

> That question does not permit just a simple "yes" or "no" answer. . . . There is a lot of related matters that would ultimately make that decision. As you know, we have always attempted to work out with our distribution customers service of the nature to which you are generally referring, and particularly where there is an industrial company involved that is not daily engaged in the producing of gas from which Transcontinental is a purchaser.
>
> Now, you are going afield of that and introducing something that we have never made any effort to do nor would we wish to do that. If we were pressed by somebody in that position as a matter of right that we had to transport it for them, I think we would have to have some legal advice before we tell them we couldn't do it. (Tr. 347)

In answer to a question concerning Transco's policy in the event any other refinery company should request transportation service, he stated "it would depend I think on the practicalities of it, did they own gas adjacent or somewhere near our pipeline, a supplier of gas to us, was their refinery located on our pipeline or not." (Tr. 353)

On this record, therefore, the distributor's potential customers are limited to industrial customers who have their own producing fields near Transco's line, or the line of any other interstate pipeline serving the eastern seaboard in which the interveners herein are located.[38] The evidence shows that there are no such industrial customers near any interstate pipeline serving the interveners in opposition herein.

---

[38] As in Texaco's case, however, whether such an industrial customer is truly a potential industrial customer depends upon whether the distributor can offer an "attractive" price to the industrial.

There are numerous chemical companies on the east coast. Many of them have gas producing subsidiaries. At least one chemical company not having gas reserves has mentioned to a distributor the possibility that it might acquire gas reserves and arrange for transportation instead of buying gas from the distributor. The evidence of record shows that no chemical company with gas producing subsidiaries has uncommitted supplies of gas reserves near one of the interstate pipelines serving the eastern seaboard and is presently considering transporting such reserves to their plants in the east. Merck and Company is the only chemical company shown to be within the service area of any intervener in opposition.

In 1956 Transco advised Elizabethtown Consolidated that Merck and Company had approached Transco in regard to securing the transportation of natural gas on a firm basis. Merck was to buy the natural gas in the field. Elizabethtown Consolidated then had conferences with Merck which ended without agreement. Subsequently, in 1956 Texas Eastern Transmission Corporation approached Elizabethtown Consolidated and advised it that they wanted to enter into a joint venture with Merck to build a menthol plant on Merck's property and supply gas to it. Elizabethtown Consolidated objected to the project. It was not completed.

This record shows that there are 14 major refineries on the east coast. Three of them were shown to be in Elizabethtown Consolidated's service area. None was shown to be in the service area of any other intervener in opposition. The three are as follows: the Esso Bayway Refinery of Humble Oil & Refining Company; the Hess Oil and Chemical Corporation, and the California Oil Company. The pipelines of Transco and Texas Eastern Transmission Corporation are either adjacent to or go through these refinery properties. Elizabethtown Consolidated's witness did not know whether any large industry in its service area, including the aforesaid three refineries, had uncommitted reserves of gas in the field near an interstate pipeline serving such eastern seaboard area.

Elizabethtown Consolidated has never sold any substantial quantities of gas to any of the three refineries. It has been negotiating with Hess Oil Company for a sale to the latter of interruptible gas for the four summer months. (During these months a lower than normal rate is quoted.) Their discussions never centered around the transportation by Hess of its own gas. Negotiations between Elizabethtown Consolidated and California Oil were begun recently. The terms considered were the sale of interruptible gas for the four summer months at 4 cents per therm (about 41.6 cents per Mcf at 1,040 Btu).

Elizabethtown Consolidated "fears" that its efforts to secure the above interruptible contracts will collapse if the instant application is approved, because the companies will then seek transportation of their gas rather than buy it from them.[39] It also "fears" loss of future business and the loss of existing unspecified customers. However, Elizabethtown Consolidated, as did Public Service, failed to make a distinction between a producing company owning uncommitted reserves near a pipeline and a company which would have to make a direct purchase in the field.

According to this record none of the producers of natural gas, other than Texaco, located in the service area of any of the interveners in opposition has uncommitted reserves near an interstate pipeline serving such service areas.

---

[39] However, it was not shown that these companies owned uncommitted gas reserves near a pipeline serving New Jersey.

The Examiner finds that on the basis of the reliably probative and substantial evidence of record the certification of Transco's proposal, limited as aforesaid, will not create a precedent which will be detrimental to the interests of the interveners in opposition herein.

Tax Avoidance

The Board of Public Utility Commissioners, Public Service, and Elizabethtown Consolidated contend that approval of the instant application would permit and encourage ruinous competition because an industrial company could save 14 cents on every dollar by purchasing gas from an interstate pipeline company. The saving arises due to the New Jersey statute which imposes a franchise and gross receipts tax on every dollar of gas sale revenue.[40] The amount is presently computed at 14.0625 percent. It is urged that the avoidance of such taxes by the proposed transportation agreement is so clearly against the public interest that, standing alone, it requires denial of the application.

Payment of the franchise and gross receipts tax exempts Public Service from paying New Jersey personal property tax (ad valorem), and corporate franchise, business, and state income taxes. It also entitles it to use public streets and highways without paying further compensation. Since Transco pays personal property and other taxes to the State of New Jersey, it and Texaco contend that the tax is not a true saving. Public Service argues that this is a distinction without a difference because Transco's tax payments are rolled into its cost of service upon which its CD-3 firm-contract rate is computed. In the Examiner's view, the competitive effects of the various taxes on Transco and Public Service cannot be determined without a detailed analysis of the whole New Jersey tax structure. The record does not permit of such an analysis and none is needed. Regardless of the effect on Transco and Public Service, the important consideration is that Texaco, and any other purchaser, would have to pay 14.0265 percent more for every dollar of gas purchased from Public Service. The Examiner finds, for the reasons discussed below, that the avoidance of the tax in this case is not inconsistent with the public interest.

In *Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U.S. 591 (1944), the State of West Virginia contended that the just and reasonable rates fixed for Hope by the Commission would cost the state many thousands of dollars in taxes and that the Commission should have considered the effect of such loss on the economy of the state. In response to this argument the Supreme Court stated as follows:

> We have considered these contentions at length in view of the earnestness with which they have been urged upon us. We have searched the legislative history of the Natural Gas Act for any indication that Congress entrusted to the Commission the various considerations which West Virginia has advanced here. And our conclusion is that Congress did not. (320 U.S. at 609)

The Examiner finds that the tax avoidance argument advanced by Public Service and the Board of Public Utility Commissioners provides no basis for a denial of the certificate.

OTHER TRANSPORTATION AGREEMENTS

The transportation of natural gas by a producer through the facilities of an interstate pipeline for consumption in the producer's own refinery has been found by the Commission to be in the public interest in the following cases: *Transcontinental Gas Pipe Line Corp.*, 7 FPC 24, 13 FPC 1006, 14 FPC 333 and

---

[40] R.S. 54:30A-49 to 67, inclusive.

22 FPC 836; *Chandeleur Pipe Line Company*, Docket No. CP64-37, order of December 16, 1963, 30 FPC 1515; *Texas Gas Transmission Corporation*, Docket No. CP63-327, order of September 12, 1963, 30 FPC 689; and *Sabine Pipe Line Company*, Docket No. CP64-97, order of March 25, 1964, *supra*.

The *Chandeleur*, *Lawrenceville* and *Sabine* cases were certificated under the Commission's shortened procedure.[41] As previously shown, Public Service urges that the *Sun* case does not constitute a precedent for approval of the instant application because the facts were materially different. It similarly urges that the *Lawrenceville* case is no precedent. The *Sabine* case was approved after the interveners in opposition had filed their briefs.

The point established by these cases, irrespective of certain factual differences, is that there is no Commission policy against approval of the type of transportation proposed by Transco, if the transportation is otherwise required by the public convenience and necessity. Under the circumstances of this case, where the alternative to approval is the continued use of fuel oil by Texaco without benefiting either the customers of Public Service or Transco, it is in the public interest to approve the proposal and thereby benefit all of Transco's customers, including Public Service.[42]

ADDITIONAL FINDINGS AND CONCLUSIONS

Upon consideration of the whole record and a balance of all the circumstances, and as supported by and in accordance with the reliable, probative and substantial evidence, it is further found and concluded that:

(1) Transcontinental Gas Pipe Line Corporation (Applicant), a Delaware Corporation have its principal place of business in Houston, Texas, is a natural-gas company within the meaning of the Natural Gas Act, as heretofore found by the Commission in Docket No. G-1143 (7 FPC 139).

(2) Texaco Inc., a Delaware Corporation, is authorized to do business in the states of Texas, Louisiana, and New Jersey among others.

(3) The construction and operation of the 8-inch lateral line in Louisiana and the gathering and sales meter and regulator stations in Louisiana, Texas, and New Jersey, as proposed by Applicant and as more particularly described in its application in Docket No. CP63-222, as supplemented, will be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation of such facilities are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The facilities referred to in paragraph (3) are adequate and appropriate to render the service which Applicant proposes, and which it is hereinafter authorized to provide.

(5) Applicant is able and willing properly to do the acts and to perform the transportation and the service proposed by it in its application in Docket No. CP63-222, as supplemented, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(6) The construction and operation of facilities specifically referred to in paragraph (3), and the transportation in interstate commerce, as proposed by Applicant in its application, as supplemented, are required by the public convenience

---

[41] 18 CFR 1.32. Certificates issued under the shortened procedure are issued only "in the light of all the evidence" and only if the public convenience and necessity require the construction and operation of the proposed facilities. *Atlantic Seaboard Corporation*, 27 FPC 370 (1962).

[42] *Cf. American Louisiana Pipe Line Company*, Docket No. G-2306, *et al.*, Opinion No. 402, issued September 17, 1963.

and necessity, and a certificate therefor shall be issued as hereinafter ordered and conditioned.

(7) The construction and operation of the remaining facilities proposed by Applicant in its application, as supplemented, have been certificated in Docket No. CP64-96 and the duplicate certification of such facilities is not required by the present or future public convenience and necessity.

(8) The conditions hereinafter ordered are required by the public convenience and necessity.

ORDER

WHEREFORE, *It is Ordered*, subject to review by the Commission on appeal, or upon its own motion as provided in the Commission's Rules of Practice and Procedure, that:

(A) The application by Transcontinental Gas Pipe Line Corporation in Docket No. CP63-222, as supplemented, is denied insofar as it requests authority to construct, install, and operate the following facilities: (1) 10.82 miles of 30-inch pipeline loop in Louisiana; (2) 11.08 miles of pipeline loop in Pennsylvania; and (3) an additional 3,400 H.P. compressor unit at existing Station No. 80, all as more particularly described in its application, as supplemented.

(B) A certificate of public convenience and necessity be, and hereby is, issued in Docket No. CP63-222 to Transcontinental Gas Pipe Line Corporation to construct and operate the 8 inch lateral line in Louisiana and the gathering and sales meter and regulator stations in Louisiana, Texas, and New Jersey, and to transport natural gas in interstate commerce, all as hereinbefore set forth and as more fully described in the application, as supplemented, and the exhibits and record herein, for the transportation of natural gas as therein set forth, upon conditions hereinafter ordered.

(C) The certificate issued by Paragraph (B) above is granted on the express conditions (1) that the firm and interruptible transportation services authorized herein shall be subject to curtailment and interruption if required to meet the existing or future contracted maximum daily delivery obligations of Transcontinental Gas Pipe Line Corporation for firm resale service to its customers, including, but not limited to, its General Storage Service Rate Schedule (GSS) customers; (2) that excess deliveries under its Rate Schedule GSS shall be given priority over the interruptible transportation service authorized herein; and (3) that the conditions in this Paragraph (C) are to be included as a part of its Rate Schedule X-37 when such schedule is filed with the Commission.

(D) The certificate issued herein, as conditioned, is not transferable and shall be effective only so long as Applicant continues the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations, and orders of the Commission.

(E) The certificate issued herein shall be deemed accepted and in full force and effect unless refused in writing, and under oath by Applicant within 30 days of the effective date of the final order herein.

(F) The facilities authorized herein shall be constructed and placed in actual operation within six months from the effective date of the final order herein.

(G) The grant of the certificate issued herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or of Part 154 of the Commission's Regulations thereunder requiring the filing of rate schedules for the service hereunder (18 CFR 154), and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Applicant.

(H) The general terms and conditions set forth in paragraphs (a), (b), (c) (1), (c)(2), (c)(3), (c)(4), and (e) of Section 157.20 of the Commission's

Regulations under the Natural Gas Act (18 CFR 157.20) shall attach to the certificate issued to Transcontinental Gas Pipe Line Corporation and to the exercise of the rights granted thereunder.

DYER JUSTICE TAYLOR,
Presiding Examiner

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

WISCONSIN POWER & LIGHT COMPANY, PROJECT NO. 2347; SOUTH BELOIT WATER, GAS AND ELECTRIC COMPANY, PROJECT NO. 2373

ORDER DENYING APPLICATIONS FOR REHEARING

(Issued February 17, 1965)

On November 6, 1964, the Wisconsin Power & Light Company and the South Beloit Water, Gas and Electric Company (Applicants) filed two identical applications under Section 313(a) of the Federal Power Act for rehearing on the Commission's license orders issued October 7, 1964, 32 FPC 926, 928, with respect to Wisconsin's Janesville Central Plant located on the Rock River in Wisconsin, Project No. 2347, and South Beloit's Rockton Plant located on the Rock River in Illinois, Project No. 2373. By order issued December 1, 1964, rehearing was granted for the purpose of affording opportunity for further consideration. Applicants allege three errors on the part of the Commission in issuing its orders of October 7, 1964.

1. The first error alleged by Applicants is that paragraph (B)(i) of the orders issuing license[1] fails to describe sufficiently limits of the project boundaries because the project maps, Exhibit K, submitted with the applications in accordance with Section 131.6 of the Regulations contained only the general location of their projects without specifying the project boundaries. It is Applicants' view that the indefiniteness as to the project boundaries creates a cloud upon the title to lands adjacent to but not a part of the projects because of the conditions contained in Form L-9 (July 1, 1964), 32 FPC 577, and various provisions with respect to recapture, relicensing, termination and revocation.

This alleged error is substantially the same as the error alleged by Wisconsin Power & Light in its application for rehearing on Commission's order issued August 10, 1964, 32 FPC 575, with respect to its Project No. 2346. We reiterate here what we said in response to this motion in our order issued October 8, 1964, 32 FPC 959, denying application for rehearing in Project No. 2346:

> As a practical matter, Applicant cannot be aggrieved by any possible vagueness in the definition of the project boundaries because the Commission's order issuing a license for the project makes clear in finding No. 7 and ordering paragraph (D) that the Commission has waived the provisions of Section 14, except insofar as the power of condemnation is reserved, as authorized in Section 10(i) of the Power Act with respect to projects of not more than 2,000 horsepower installed capacity. Consequently, the project may be taken over by the United States only with the consent of the licensee or upon condemnation; and in either event the lands and project works to be taken over would be subject to definition at that time and would not

---

[1] Paragraph (B)(i) of the aforesaid orders provides that the projects shall include: (i) all lands constituting the project area and enclosed by the project boundary of the limits of which are otherwise defined.

> depend upon any present definition of the project boundaries. Due to the waiver of Section 14 and other sections of the Act, the Commission followed its usual procedure in this case by neither approving [nor] disapproving the Applicant's map, Exhibit K. * * *

Those reasons are equally applicable to this first error alleged by Applicants here, since here as in Project No. 2346 it appears that the lands with which applicants are concerned, are fast lands; *i.e.*, lands above the high water mark along the bed of the stream on which the projects are located. See *United States* v. *Willow River Power Co.*, 324 U.S. 499, 508.

Applicants' revised Exhibit K annexed to their applications for rehearing will be filed in the Commission's official files on these projects. If it should be subsequently determined that Sections 14 and 15 of the Act should not be waived (see point 2, *infra*) we shall, of course, have to approve an appropriate Exhibit K, among other exhibits which would then be required.

2. Applicants' second alleged error arises from the waiver of Section 15 of the Federal Power Act and from the attachment of Article 10 of Form L-9 to the order as part of the conditions on which the licenses were granted. Applicants contend that the waiver of this Section deprives them of certain rights granted by that Section which the Commission is not authorized to waive by Section 10(i) of the Act. It is Applicants' view that Section 10(i) was intended to be used to relieve licensees of projects of less than 2000 horsepower installed capacity of the burdensome provisions only of the Federal Power Act. Applicants' notes that the waiver of section 15 of the Act would waive the right of the Licensee at the expiration of the license term to have an annual license issued to it on a year to year basis under the terms and conditions of the original license unless or until the project is recaptured by the United States or the Commission issues a new license to the original licensee or to a new licensee. Applicants do not complain of the proposed waiver of Section 14 of the Act.

The difficulty with this proposition is that it will leave the United States without adequate protection at the end of the license period. For, if Section 14 of the act is waived but not Section 15, the Licensee at the end of its license term will have an absolute right to continue to operate its project either under a new license or under an annual license subject only to the Commission licensing the project works to another party (upon that Party's paying to the Licensee the net investment plus severance damages as provided for in Section 14), or to have the United States condemn the project works while still under license. We think it clear that the interests of the United States in waterways subject to its jurisdiction cannot be protected under such a procedure. Either the United States must have the right to recapture project works pursuant to the standards of Section 14 at the end of a license term or it must have the right (as it would if both Sections 14 and 15 are waived) of taking appropriate action to clear the stream if at the end of a licensed term the continued presence of a small project thereon is no longer compatible with the public interest. *Cf. United States* v. *Chandler Dunbar*, 229 U.S. 53, 69.

Congress has recognized, in giving us authority to waive Sections 14 and 15 of the Act, among others, that in the case of small hydroelectric projects the interests of the United States may be more in maintaining control over waters subject to the jurisdiction of the United States than in eventually taking over the particular project works at less than a condemnation price. We have, in turn, in the exercise of our discretion, normally offered applicants for minor licenses, a license waiving Sections 14 and 15 of the Act in lieu of one which does not. If an applicant for a minor license is unwilling to risk the possibility that at the end of its license terms (plus such additional time as might be entitled to pursuant to Section 9(b) of the Administrative Procedure Act), the Commission might find that any continued operation of facilities would be inconsistent with the public interest, it need not do so. If, however, it is unwilling to accept a license which waives Article 15 as well as Article 14, its alternative is to apply for and accept a license which is subject to *both* Sections 14 and 15, together with the other provisions of the Act necessary to the effectuation thereof which we would otherwise waive for a minor license.[2]

Article 10 of Form L–9[3] to which Applicants also object is merely a restatement of the provisions of the first sentence of Section 23(b) of the Act as applied to Applicants' projects. That section provides that it would be unlawful to operate or maintain these projects except under and in accordance with an existing license granted pursuant to the Federal Power Act. The article to which Applicants object, if anything, gives them greater rights since it is written in language broad enough to encompass any rights Applicants might have under Section 9(b) of the Administrative Procedure Act or any other applicable provision of law.

3. Applicants allege that the third error arises from the inclusion of Articles 8 and 9 in Form L–9 which has been attached to the orders issuing licenses. The Applicants maintain that these license conditions provide a method of termination of the licenses in case of an abandonment more burdensome than the statutes since under the statute the United States would have the affirmative burden of the equity action under Section 26 of the Federal Power Act to deprive a licensee of its property and license.

Section 26, which has not been waived provides in part:

> * * * that the Attorney General may on request of the Commission or the Secretary of the Army, institute proceedings in equity in the District Court of the United States in which the project * * * is situated for the purpose of revoking for violation of its terms any permit or license issued [under the Federal Power Act].

The language of this section clearly indicates that it provides a discretionary remedy and does not preclude the exercise by the Commission of other powers granted to it by the Federal Power Act as amended in 1935 to insure compliance with the provisions of that Act and its own rules and regulations. Articles 8 and 9 are standard license conditions which the Commission has consistently attached for several years to licenses for minor projects. Article 8 permits the Commission on 90 days public notice to terminate the license if the licensee causes essential project property to become unfit for use, or discontinues good faith operation for three years, or refuses to comply with the terms of the license and lawful Commission orders. Article 9 requires the licensee to remove all buildings, equipment and power lines upon the abandonment of the project.[4] Section 6 of the Federal Power Act permits the issuance of licenses for a period not to exceed 50 years upon such conditions, if any, as the Commission shall prescribe in conformity with the Act, and Section 10(g) authorizes the issuance of licenses upon conditions not inconsistent with the provisions of the Federal Power Act. The conditioning of a license for a project of not more than 2,000 horsepower installed capacity, upon the Licensee's willingness and ability to maintain its project in working order, and to comply with the terms of its license and the lawful orders of the Commission, in our judgment, is not an unreasonable exercise of the Commission's authority in issuing licenses for these projects subject to Section 10(i) of the Act. Any action taken by the Commission under these license conditions would be subject to rehearing and court review as provided in Section 313 of the Act.

---

[2] In granting minor licenses in which Sections 14 and 15 are waived, we have also normally waived Sections 4(b) except the second sentence thereof, 10(c) insofar as it relates to depreciation reserves, and 10(d). All of these provisions are essential if we are to be able effectively to determine the price at which a project can be recaptured by the United States under Section 14 or taken over by a new licensee under Section 15.

[3] *Article 10.* The right of the Licensee and of its transferees and successors to use or occupy navigable waters of the United States under the license for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless a new license is issued pursuant to the existing laws and regulations.

[4] Sections 6.2 and 6.4 of the Commission's Regulations (18 CFR 6.2 and 6.4) in effect as early as 1938, provide for termination of licenses subject to Section 10(i) of the Act by implied surrender and require appropriate disposition of project works as a condition of surrender.

The Commission finds:

The assignments of error or grounds for rehearing set forth in the applications for rehearing filed by the Applicants on November 6, 1964, on the Commission's orders issued October 7, 1964, present no facts or principles of law which were not considered by the Commission when it issued the aforesaid orders or which having now been considered warrant change or modification of the said orders.

The Commission orders:

(A) Wisconsin Power & Light Company's and South Beloit Water, Gas & Electric Company's applications filed on November 6, 1964, for rehearing of the Commission's orders issued October 7, 1964, in Project No. 2347 and Project No. 2373 are denied.

(B) This order shall become final within 60 days from the date of issuance, provided that it shall be stayed with respect to each of the applications which is supplemented within that time pursuant to Section 4.50 of the Commission's Rules and Regulations under the Federal Power Act.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

BANGOR HYDRO-ELECTRIC COMPANY, PROJECT NO. 2403

ORDER ISSUING LICENSE (MAJOR)

(Issued February 18, 1965)*

Application was filed on September 3, 1963 by Bangor Hydro-Electric Company (Applicant) of Bangor, Maine, for a license under Section 4(e) of the Federal Power Act (Act) for constructed major Project No. 2403, known as the Veazie Project, located on the Penobscot River, in Penobscot County, Maine.

According to the application, the initial construction of the project was about 1886 consisting of a wood crib dam, 15 turbines and 3 generators. In 1912–13, the present Ambersen type concrete dam was constructed to replace the wood crib dam. Between 1914 and 1920 all of the turbines and generators were replaced. In 1925, the project was acquired by Applicant. In 1933, Unit No. 1 was replaced with a new turbine and generator. The powerhouse with 15 units installed therein is known as Powerhouse A. Powerhouse B was constructed in 1938–39 with two units placed in operation in March, 1939. The total generating capacity of the project is 8,400 kilowatts. No major changes or additions have been made to the project since 1939.

---

*Rehearing denied by order issued July 12, 1965, 34 FPC 23. Affirmed, *Bangor Hydro-Electric Co.* v. *F.P.C.*, 355 F. 2d 13 (CA1–1966).

The Penobscot River and its East and West Branch have been used extensively in boating operations for the transportation of persons and property between various points on such streams. Extensive logging operations have been conducted between the mouth of the Penobscot River at Penobscot Bay and the international boundary on the West Branch and Chamberlain Lake on the East Branch.

The Secretary of the Army and the Chief of Engineers have approved the plans of the project structures affecting navigation pursuant to Section 4(e) of the Act.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project certain conditions in the interests of fish and wildlife and recreation.

The Department of Health, Education, and Welfare has advised that the project does not constitute a source of pollution and although releases for low flow regulation may be necessary at some future date, such is not warranted at this time, and the granting of a license for the project will not create or intensify vector problems.

The Veazie Project is a small project with little potential for recreational development, and, although there is not much demand for recreation or fish and wildlife facilities at the present, current studies by the Maine Department of Inland Fisheries and Game and the Maine Atlantic Sea Run Salmon Commission indicate that future alterations of the project may need to be made for fishing and other water-orientated recreational use, as well as for anadromous fish passage.

While Applicant has filed an Exhibit R, it has not filed a recreational use plan appropriate for approval. By Article 32 herein we are requiring Applicant to cooperate with Federal, State and local agencies in the interest of recreation in connection with the use of project lands and waters by the public and to keep us advised at stated intervals with respect to the results.

In accordance with the criteria set forth in our April 25, 1962 Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of January 1, 1938 and a termination date of December 31, 1987.

The Commission finds:

(1) The project is located on a navigable waterway of the United States.

(2) Applicant is a corporation organized under the laws of the State of Maine, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 11,200 horsepower, and the amount of annual charges, based on

such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable.

(7) The energy generated at the project is distributed and sold by Applicant for public utility purposes.

(8) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of this license.

The Commission orders:

(A) This license is hereby issued to Bangor Hydro-Electric Company (Licensee) of Bangor, Maine, under Section 4(e) of the Federal Power Act (Act) for a period effective January 1, 1938 and terminating December 31, 1987, for the continued operation and maintenance of constructed Project No. 2403, located on the Penobscot River, a navigable waterway of the United States, subject to the terms and conditions of the Act, which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2403 consists of:

(i) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interests in such lands necessary or appropriate for the purpose of the project, whether such lands or interests therein are owned or held by the Licensee or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit J: (FPC No. 2403–1) General Map—Project Area; (FPC No. 2403–2) General Map—Transmission System; and

Exhibit K: Three Sheets (FPC Nos. 2403–3, –4, and –5) Detail Map, Reservoir.

(ii) Project works consisting of: a concrete Ambersen type dam with 7-foot flashboards; a reservoir with a surface area of 350 acres at a pool elevation of 35 feet (USGS Datum); a concrete cantilever wall with 3-foot flashboards forming a forebay; concrete headgates; a gated intake section; *Powerhouse A*, containing 15 turbines with a total capacity of 7,013 horsepower connected to 15 generators with a total capacity of 5,400 kilowatts; *Powerhouse B*, containing two 2,070-horsepower turbines each connected to a 1,500-kilowatt generator; step-up transformers; a fishway; and appurtenant electrical and mechanical equipment; the location, nature and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit L: Sheet 1 (FPC No. 2403–6) General Plan and Dam Sections; Sheet 2 (FPC No. 2403–7) Main Floor Plan; Sheet 3 (FPC No. 2403–8) Transverse Sections; Sheet 4 (FPC No. 2403–9) Longitudinal Section; and

Exhibit M: Ten typewritten pages, entitled, "General Description and Specifications of Equipment and Appurtenances" filed in the Commission on September 3, 1963.

(iii) all of the structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such propetry as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-3 (Revised August 1, 1964), entitled, "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States" (32 FPC 1114), which terms and conditions, designated as Articles 1 through 29, are attached hereto and made a part hereof except for Article 25 thereof; and subject to the following special conditions set forth herein as additional articles:

Article 30. The Licensee shall pay to the United States the following annual charge, effective as of January 1, 1938:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. The authorized installed capacity for such purposes is 11,200 horsepower.

Article 31. The Commission reserves the right to determine at a later date what additional transmission facilities, if any, shall be included in this license as part of the project.

Article 32. Licensee shall cooperate with Federal, State and local agencies in the development and maintenance of access areas and roads and such other facilities necessary for full recreational utilization by the public of project lands and waters, consistent with the terms of the license and the operation of the project. At the end of six (6) years from the date of issuance of this license and every sixth year thereafter, Licensee shall advise the Commission by letter of the results of cooperation with such agencies and of further recreation development at the project.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgement of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

OPINION NO. 450

COLORADO INTERSTATE GAS COMPANY, DOCKET NO. CP64-294; KANSAS-NEBRASKA NATURAL GAS COMPANY, INC., COMPLAINANT v. COLORADO INTERSTATE GAS COMPANY, DEFENDANT, DOCKET NO. RP65-43

OPINION AND ORDER GRANTING CERTIFICATE AND INSTITUTING RATE INVESTIGATION

(Issued February 18, 1965)*

Syllabus

1. Commission can and will consider effect of grant of certificate for new sale upon rates charged existing customers and order seller [as certificate condition] to reduce or change its rates to such other customers, particularly where if no action were taken existing rate-payers would immediately receive less valuable service and could not secure relief until subsequent pipeline rate case. PP. 282, 283.
2. There is no reason for tying rate matters to instant certificate proceeding: such action would result in further delay in authorizing a sale which is

---

*Initial decision appears on P. 285. Order issued April 12, 1965, modifying Opinion No. 450 and order, 33 FPC 719.

admittedly in the public interest, at a rate no one suggests is improper. P. 283.

3. Since pleadings and record leave unresolved substantial questions of fact concerning rate schedule [including undue discrimination] Commission considers pipeline-purchaser's allegations as formal complaint and institutes investigation. P. 283.

4. Commission *issues* certificate of public convenience and necessity under Section 7 of the Natural Gas Act and *institutes* investigation under Section 5(a) thereof.

***William R. Duff* and *Frank P. Saponaro, Jr.* for Colorado Interstate Gas Company.**

***E. A. Stansfield* for Public Service Company of Colorado, Cheyenne Light Fuel & Power Company, Colorado-Wyoming Gas Company.**

***J. Robert Wilson* and *John P. Furman* for Kansas-Nebraska Natural Gas Company, Inc.**

***Mrs. Julia B. Smith* for the Staff of the Federal Power Commission.**

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

O'CONNOR, *Commissioner:*

On November 4, 1964, the Presiding Examiner issued his initial decision granting Colorado Interstate Gas Company (Colorado Interstate) a certificate of public convenience and necessity under Section 7(c) of the Natural Gas Act (Act) authorizing it to construct 0.19 miles (800 feet) of three-inch line from its 40-mile 12-inch pipeline lateral running east and west just south of the Wyoming border, and to sell some 74,873 Mcf of natural gas (estimated annual third-year volume) from the three-inch line to the Cheyenne Light, Fuel & Power Company (Cheyenne Company), for resale in the town of Pine Bluffs, Wyoming. Colorado Interstate would make the sale under its P–1 rate schedule.

Kansas-Nebraska Natural Gas Company, Inc. (Kansas-Nebraska), a partial requirements purchaser of gas from Colorado Interstate, filed exceptions on December 4, 1964, objecting to the issuance of such certificate to Colorado Interstate. Kansas-Nebraska contends that to permit the sale from Colorado Interstate's 12-inch line under its P–1 rate schedule would result in undue discrimination against Kansas-Nebraska because Kansas-Nebraska must purchase gas from the same 12-inch line under Colorado Interstate's allegedly less favorable P–2 rate schedule. Kansas-Nebraska contends that the Examiner erroneously refused to deal with the merits of this issue. By way of relief, Kansas-Nebraska requests that the certificate be denied, or else be conditioned to require the filing of a revised rate applicable to its purchases based upon a 53 percent minimum take-or-pay requirement, instead of the present 75 percent requirement of the P–2 rate.

Kansas-Nebraska also contends that the Examiner erred in not dealing with its claim that the above alleged discrimination would violate Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act (15 U.S.C. 13(a)), and complains of the exclusion of its testimony on the alleged discrimination.

Replies to Kansas-Nebraska's exceptions were filed by Staff on December 23, 1964, by Colorado Interstate on December 24, 1964, and jointly by the Cheyenne Company, the Public Service Company of Colorado, and Colorado-Wyoming Gas Company on December 24, 1964. All contend that the Examiner's decision is correct and urge its adoption.

Kansas-Nebraska is undoubtedly correct in its assertion that there are circumstances where we can and will consider the effect of a grant of a certificate

for a new sale upon the rates charged to existing customers, and order the seller to reduce or change its rates to such other customers as a condition to the grant of the certificate. Thus, in *Northern Natural Gas Company*[1] we conditioned the grant of a certificate for a non-jurisdictional sale of gas to an affiliated processing plant upon the applicant's reducing the charges to its resale customers to reflect the loss from the Btu content of the gas stream resulting from grant of the certificate. As we stated in the similar *Panhandle Eastern Pipe Line Company* case,[2] "where the immediate effect of Commission action certificating a new sale may be to harm existing jurisdictional customers" there may be justification for "prompt remedial action". In both of these cases, however, if we had not taken action in the certificate case the other ratepayers would have immediately received less valuable service and could not have secured relief therefrom until a subsequent pipeline rate case.

There is no such immediate harmful effect here. Kansas-Nebraska's principal contention is that, in the light of the proposed sale to Cheyenne Company, the provision in the P-2 Schedule applicable to it, incorporating a 75-percent take-or-pay obligation, is no longer appropriate. This may or may not be correct, but Kansas-Nebraska does not contend that the sale to Cheyenne would in itself injure it or worsen its take-or-pay situation, and does not even contend that its present rates of take make the 75-percent obligation applicable. Significantly, Kansas-Nebraska does not contend that the public interest would not be served by the proposed sale. In these circumstances, we conclude that there is no reason in the present case for tying the rate matters to the certificate proceeding, an action which would only result in further delay in authorizing a sale which is admittedly in the public interest to be made at a rate which no one suggests is improper.

However, the pleadings and record in this case leave unresolved substantial questions of fact concerning the P-2 rate schedule; whether, among other things, Kansas-Nebraska is subject to undue discrimination and, if so, the tariff provisions, rules and regulations the Commission should prescribe, pursuant to the provisions of the Act, for service to Kansas-Nebraska by Colorado Interstate. Simultaneously, therefore, with the granting of a certificate to Colorado Interstate, we shall, by considering Kansas-Nebraska's allegations as a formal complaint, institute an investigation into the propriety of Colorado Interstate's P-2 rate schedule.

It appears that a public hearing should be held in order to afford all interested parties an opportunity to present evidence concerning the issues herein; that Kansas-Nebraska has the obligation of adducing evidentiary support of its allegations and of going forward in the presentation of its case-in-chief; that the issues involved herein should be determined with the greatest possible expedition in conformity with Section 2.59(h) of the Commission's Rules of Practice and Procedure and, to that end, each party should have the opportunity to understand and evaluate the position of the other parties. All matters which can be fully resolved without formal trial should be eliminated from hearing and settled by stipulation.

Since we do not dispose of the allegations of discriminatory treatment, we need not consider at the present time Kansas-Nebraska's further allegations of a violation of Section 2(a) of the Clayton Act. In the light of our conclusion herein we need not consider the propriety of the Examiner's exclusion of some of Kansas-Nebraska's evidence.

---

[1] 28 FPC 1155 (1962).

[2] 30 FPC 1260 (1963), at 1266.

The Commission finds:

(1) The construction and operation of the proposed facilities and the proposed delivery of natural gas by applicant are required by the public convenience and necessity and a certificate therefor should be issued.

(2) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that we, upon our own motion, institute an investigation pursuant to Section 5(a) of the Natural Gas Act to determine the propriety of the 75-percent take-or-pay provision applicable to sales to Kansas-Nebraska from the 12-inch line involved herein. The issues should be expedited in accordance with the procedures set forth below.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing applicant to construct and operate the proposed facilities as hereinbefore described.

(B) Except to the extent indicated above, the exceptions filed to the Presiding Examiner's decision by Kansas-Nebraska Natural Gas Company, Inc., on December 4, 1964, are hereby denied.

(C) Pursuant to authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by the Natural Gas Act, particularly Sections 5, 15, and 16 thereof, the Commission's Rules of Practice and Procedure, and the Regulations under the Natural Gas Act (18 CFR, Chapter I), a public hearing will be held concerning the matters involved to determine whether or not the retention of the 75-percent take-or-pay provision applicable to sales to Kansas-Nebraska from Colorado Interstate's 12-inch line involved herein is just and reasonable within the meaning of the Act, and not unduly discriminatory.

(D) Kansas-Nebraska shall serve the prepared testimony and exhibits constituting its case-in-chief upon all parties on or before March 15, 1965.

(E) The respondent, Colorado Interstate, shall serve the prepared testimony and exhibits constituting its case-in-chief upon all parties on or before April 12, 1965.

(F) The Commission Staff and all other parties to this proceeding proposing to present evidence herein, shall serve their prepared testimony and exhibits on all parties on or before May 10, 1965.

(G) The Presiding Examiner shall set the date for the service of Kansas-Nebraska's rebuttal case and, if determined necessary and appropriate without unduly delaying the proceeding, he may provide for filing of cross-rebuttal between the parties on a date prior to the date set for service of Staff's rebuttal.

(H) Presiding Examiner Allen C. Lande or any other officer or officers of the Commission designated by the Chief Examiner for that purpose (see delegation of authority, 27 F.R. 4276, etc.), shall preside at the prehearing conference and at the hearing in this matter, pursuant to the Commission's Rules of Practice and Procedure, and as further provided by this order, shall set the date of hearing by notice thereof.

(I) Without limitation upon the authority of the Presiding Examiner to convene conferences prior to, or subsequent to the date herein fixed pursuant to the provisions of Section 1.18 of the Commission's Rules of Practice and Procedure, a prehearing conference before the Presiding Examiner herein designated shall commence at 10:00 A.M. (EDST) on May 18, 1965 in a hearing room of the Federal Power Commission, 441 G Street, N.W., Washington, D.C., 20426, for the purpose of effectuating the intent of the Commission as hereinabove set out.

(J) Notices and petitions to intervene may be filed with the Federal Power Commission, Washington, D.C., 20426, in accordance with the Commission's

Rules of Practice and Procedure, Section 1.8 and 1.37(f) [18 CFR 1.8 and 1.37(f)] on or before March 15, 1965.

INITIAL DECISION

OF THE PRESIDING EXAMINER GRANTING CERTIFICATE

(Issued November 4, 1964)

FRIBOURG, *Presiding Examiner:* This proceeding is brought to consider the application of Colorado Interstate Gas Company for a certificate of public convenience and necessity under Section 7(c) of the Natural Gas Act in order to construct and operate some 800 feet of 3-inch pipeline and the associated gas measurement facilities. The facilities would be at its Kansas-Nebraska meter station in Weld County, Colorado, whence the proposed pipeline would extend northward into Wyoming. There sales would be made to Cheyenne Light, Fuel & Power Company (Cheyenne) for resale in the town of Pine Bluffs, Wyoming. The estimated annual third-year volume of deliveries to Cheyenne is 74,873 Mcf.

The Question Presented

The economic, financial and engineering feasibility of the project, the adequacy of the gas supply, and the demand for the service, are sufficiently established and are not challenged. The issue, raised by intervenor Kansas-Nebraska Natural Gas Co., Inc., (Kansas-Nebraska) relates to the fairness of Colorado Interstate making this sale to Cheyenne on one rate schedule while selling to Kansas-Nebraska on another. Kansas-Nebraska claims that the difference is discriminatory and hence contrary to the public convenience and necessity, and that to grant the certificate would violate Section 2(a) of the Clayton Antitrust Act, 15 U.S.C. § 13(a). It does not oppose the sale to Cheyenne as such, but only the sale to Cheyenne on terms "which would discriminate against Kansas-Nebraska" (K-N reply brief, page 1).

The Facts

At present, Kansas-Nebraska is the only customer taking gas from Colorado Interstate's 12-inch line from which the proposed 3-inch line would extend. The rate schedule under which it takes from this 12-inch line is known as Colorado Interstate's P-2 rate schedule. The P-1 schedule of that company, under which the proposed sale would be made, is available throughout the entire Colorado Interstate system to any pipeline company, and to any distributor owning substantial transmission facilities, who transports gas to its city-gate sales point or to its distribution system. The demand charges and the commodity charges in the two schedules are identical. The basic difference is that P-2 provides for minimum monthly and annual bills based on a 75 percent load factor, while P-1 merely has a minimum monthly bill equal to the demand charge. Kansas-Nebraska claims that such a difference, applicable to sales from the same line, is discriminatory.

The uncontroverted testimony of staff witness Kaminsky shows that Kansas-Nebraska, an interstate pipeline, has numerous other sources of supply besides Colorado Interstate. It buys from producers in the Anadarko Basin in Kansas and Colorado, the Denver-Julesburg Basin in Colorado and Wyoming, in Wind River and Powder River in Wyoming and from Northern Natural in Nebraska. It is presently proposing (Docket Nos. CP64-250 and CP64-315) to increase its sources of supply other than Colorado Interstate. Cheyenne, on the other hand, is a local distribution company, buying all of its requirements from Colorado Interstate.

The Commission's order authorizing construction of the 12-inch line from which Kansas-Nebraska is now being served also authorized the sale by Colorado Interstate to Kansas-Nebraska. The order was issued July 19, 1963, 30 FPC 356, and took note of the fact that Colorado Interstate would make the sale under the P–2 rate schedule. The order of February 18, 1964 (Docket No. RP64–13) recites that certain changes in the P–2 schedule were tendered for filing on October 7, 1963, that the filing was suspended and became effective subject to refund on November 8, 1963, and that on January 13, 1964, Colorado Interstate moved to terminate the proceedings and tendered for filing a revised P–2 rate schedule. The January 13 revision eliminated a previously proposed rate increase and reduced Kansas-Nebraska's take-or-pay provision from 85 percent to the present 75 percent. Kansas-Nebraska stated that the changes were agreeable to it.

Discussion

Most major pipeline companies differentiate between their partial-requirements and full-requirements customers by means of tariff provisions which impose a minimum load factor upon the partial-requirements customers. That is, there is a take-or-pay provision generally applicable to them designed to protect the pipeline seller from loss in the event that the partial-requirements customer turns to a different source of supply. Should that event occur, and were there no such provision, the pipeline would either have to shift the loss to its other customers or bear it itself.

In its petition to intervene in this proceeding Kansas-Nebraska argued that it would be discriminatory and preferential to authorize the proposed sale to Cheyenne on the P–1 rate schedule while Kansas-Nebraska was required to buy under the P–2 schedule. It urged that

> * * * any certificate issued herein should be conditioned upon both Cheyenne and Kansas-Nebraska being served on the P–1 rate to eliminate any undue preference or advantage and any undue prejudice or disadvantage.

Subsequently, Kansas-Nebraska changed its position. It recognized that to put it on the P–1 rate might, as its counsel stated (Tr. 9):

> * * * not be quite fair, because we have alternative sources of supply and we might take the lower load factor than other P–1 customers. It is conceivable we might, because of these alternative sources of supply. So therefore what we recommend is that all gas sold off this line be sold on the P–2 rate; but that the take or pay requirement in the P–2 rate be reduced to 53 percent, which is approximately what the average load factor of the other P–1 customers is.

In its proposed findings and conclusions, Kansas-Nebraska would have the Examiner deny the certificate unless Colorado Interstate files a new rate schedule applicable to all sales from the 12-inch line,

> * * * the terms of which (1) shall not discriminate in favor of purchasers from the 12-inch line in relation to other purchasers for resale from applicant's system and (2) shall be not less favorable to the purchaser than the existing P–2 Rate Schedule.

In other words, it would require either that the proposed sale be on the present P–2 schedule or that that schedule be revised (by reducing the take-or-pay provision) and made applicable to all sales from the 12-inch line. In view of its statement that it would be unfair to impose the present take-or-pay provision on the proposed sale, it is clear that the second alternative is the only one being seriously advanced. What it comes down to is a demand that Colorado Interstate be required to make a take-or-pay provision applicable to the proposed sale, or to revise its rates to Kansas-Nebraska, or both, on pain of denial of the proposed sale.

Section 7 of the Natural Gas Act, though it does not grant the Commission power to suspend a rate authorized in a certificate, permits it to attach to a certificate such conditions as it deems necessary to give consumers the "complete, permanent and effective bond of protection from excessive rates and charges" for which the Supreme Court found the Act was framed. *Atlantic Refining Co.* v. *Public Service Commission*, 360 U.S. 378, 388. In cases too numerous to mention, the Commission has certificated sales of natural gas upon condition that the seller reduce the proposed initial price. It does this to protect the public from unnecessarily high rates until such time as the "just and reasonable" price may be fixed in a rate hearing.

What Kansas-Nebraska is asking here is that the proposed rate to Cheyenne be *raised*. It would like a take-or-pay provision of 53 percent to be made applicable to a sale that is expected to be made on a 40 percent load factor. Alternatively, or in combination with such a condition, it wants a reduction in its own gas purchase costs, *i.e.*, a change in Colorado Interstate's P-2 schedule.

The public convenience and necessity do not require a certificate condition that would raise the proposed cost of gas to Cheyenne. As to the demand that the P-2 schedule be changed, it should be observed that a change in an existing rate schedule may not be made without an opportunity for a rate hearing. Changes in existing rates are governed by Sections 4 and 5 of the Natural Gas Act, the former governing the filing of new rate schedules and the latter the examination of existing ones with a view to possible changes in the future. The customers of Colorado Interstate are entitled to notice and an opportunity to be heard.

A reduction in the take-or-pay provision of the P-2 rate would affect not only the customers on the 12-inch line but customers elsewhere as well. The reason for this is that the rates charged under the P-2 schedule are designed not with reference to the 12-inch line but with relation to the seller's cost of service as a whole. The 12-inch line is as much a part of the Colorado Interstate system as is any other part. It is not an entity, but a portion of an interrelated complex. The charges in both the P-1 and P-2 schedules are based on the overall cost of service of the seller. If the take-or-pay provision of the P-2 schedule is reduced and as a result the cost of the service is not recovered, the loss would necessarily fall on Colorado Interstate's other customers or on Colorado Interstate itself. For rate-making purposes, the incremental cost of service attributable to this line is irrelevant. Colorado Interstate's rates taken as a whole must cover its cost of service taken as a whole. If a particular rate does not cover its share of the cost of service, the uncovered part is transferred to customers buying under other rate schedules, or is absorbed by Colorado Interstate.

Furthermore, it cannot be assumed, as all parties here appear to have assumed, that a take-or-pay provision necessarily increases the cost of gas to the buyer. Such a provision, when made applicable to a buyer having alternate sources of supply, may be necessary to protect the seller against a swing to these alternate sources, but it need not operate as a penalty on the buyer. If, for instance, Kansas-Nebraska were to take on an additional contract demand from Colorado Interstate to cover a low-load-factor sale (like Pine Bluffs), the purchase of more gas than necessary to take care of the particular sale would reduce the unit cost and the extra gas could be used to supply new or existing demands elsewhere on the system. To what extent, if any, such use would displace the alternative sources of supply, and how the unit cost of the new purchase would compare with the cost of gas from those alternative sources, are matters for a rate case involving Kansas-Nebraska. Possibly also they would have a bearing on the question of economic feasibility in a Kansas-Nebraska certificate case involving a resale of gas purchased under the P–2 rate. In no event would they be a factor in a Colorado Interstate certificate case, which is what we have here.

Consequently, neither a consideration of the history of the P–2 rate schedule nor an examination of its provisions can answer the question whether it is discriminatory, or whether all gas sold from the 12-inch line should be sold under the same rate schedule. Such matters are appropriate only in a rate hearing, where there can be an examination of all of the seller's rates.

The possible complexities and duration of a rate hearing are amply indicated in the various opinions in the *Lynchburg Gas Co.* v. *F.P.C.*, 336 F. 2d 942, CADC, June 26, 1964. To expand the present proceeding to such a compass would leave Pine Bluffs without natural gas for an indefinite period. The public convenience and necessity do not require this result.

This does not leave Kansas-Nebraska without an avenue of relief. It may ask the Commission to hold a hearing under Section 5 of the Act for a review of Colorado Interstate's rates on the ground of discrimination, which is the ground alleged here in support of the antitrust claim. Such a proceeding could appropriately take into account all the factors bearing on those rates and on the relationship between them, including the restraint brought about by the P–2 rate on the ability of Kansas-Nebraska to do business with its lowest-cost sources of supply, the extent to which it forecloses, or tends to foreclose, Kansas-Nebraska from a substantial share or shares of a substantial market or markets, the increases in costs, if any, which would be borne by Colorado Interstate's other customers were the take-or-pay provision to be reduced or eliminated and Colorado Interstate permitted to raise its rates to them, and whether Colorado Interstate should be required to absorb any reduction in its income that might result from a reduction or elimination of the take-or-pay provisions. See the last paragraph of the opinion of Washington, J., in *Lynchburg Gas Co.* v. *F.P.C.*, *supra*, p. 950.

The Striking of Parts of Intervenor's Testimony

It being impossible, for the reasons above stated, to determine from any examination of rate schedules whether undue discrimination exists, or even whether the differences in their provisions result in any higher cost to Kansas-Nebraska,[1] the Examiner granted motions to strike two portions of the testimony offered by Mr. Thomas Creigh, Jr., a witness for Kansas-Nebraska. One portion related to the negotiations between that company and Colorado Interstate which allegedly resulted in the construction of the 12-inch line and the fixing of the P–2 rate. The company's brief states that those negotiations

> * * * have a bearing on whether the preference and advantage now proposed to be given to Kansas-Nebraska's competitor Cheyenne in the case of

---

[1] Kansas-Nebraska's own witness testified that Kansas-Nebraska is buying under the P–2 schedule at a lower, not a higher, price than Cheyenne would pay under the P–1 schedule at its expected 40 percent load factor for the proposed sale. In the first seven months of this year Kansas-Nebraska's cost of gas bought from Colorado Interstate was 22 cents per Mcf at Kansas-Nebraska's actual 88 percent load factor. At a 75 percent load factor, the level at which the take-or-pay provision would begin to be felt, the average cost would be 22.6 cents per Mcf. Cheyenne, under the P–1 schedule, would pay 25.4 cents because of its lower load factor.

purchases from the same line is "undue" within the meaning of Section 4(b) of the Natural Gas Act.

The Examiner granted the motion to strike because of the inappropriateness of deciding 4(b) questions in a 7(c) case, because the negotiations resulted in a P–2 rate which has since been changed, and because such negotiations are not significant in determining whether the schedule is unduly discriminatory at the present time.

The other portion of Mr. Creigh's testimony which was stricken consisted of his recommendations as to what rates should be charged for service from the 12-inch line and why the P–2 rate should be revised. Revision of the P–2 rate is beyond the scope of this proceeding, for reasons previously given.

The Antitrust Issue

Kansas-Nebraska's claim of a violation of Section 2(a) of the Clayton Act is not properly raised. Its petition to intervene made no mention of the antitrust laws. Its allegation that a sale on the P–1 rate would give Cheyenne an undue preference and advantage because of "the unreasonable difference in rates which results from the minimum take-or-pay provision contained in the P–2 rate" was made in the following context:

> 5. The 12-inch lateral pipeline which extends from Colorado Interstate's main 22-inch Wyoming pipeline to the said three state area was built to serve Kansas-Nebraska and Kansas-Nebraska contemplated making direct sales along this lateral pipeline. Colorado Interstate agreed that Kansas-Nebraska could make these sales as shown by the fact that the P–2 Rate Schedule expressly provides that it is to be available to Kansas-Nebraska along this lateral.
>
> 6. Colorado Interstate breached this agreement by offering to sell to Cheyenne at the P–1 rate at the very end of the lateral pipeline which Kansas-Nebraska made feasible. This sale on the P–1 rate would grant Cheyenne an undue preference and advantage and subject Kansas-Nebraska to an undue prejudice and disadvantage for the reason that Kansas-Nebraska could not compete with Cheyenne for business in this area due to the unreasonable difference in rates which results from the minimum take or pay provision contained in the P–2 rate. * * *

thus the petition's claim of undue preference, reasonably read, refers to the Natural Gas Act and in the paragraph immediately following those quoted the petition explicitly refers to Section 4(b) in that connection. The antitrust claim was raised only at the hearing.[3]

The Commission's notice of application and date of hearing, issued July 8, 1964, provides for a hearing to be held "* * * pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Section 7 of the Natural Gas Act * * *", and not under any other act or any other part of that act. There was no objection to the form of the Commission's notice, or any attempt to have its scope expanded. It would be manifestly unfair to try issues affecting other customers of Colorado Interstate without giving them adequate notice of what was to be tried. The Commission itself had no notice that antitrust issues were to be raised.

Even if the raising of Clayton Act issues were procedurally proper, however, the question whether to rule on it is, in these circumstances, a matter of discretion. There are situations in which it is desirable or even necessary to consider antitrust matters in a certificate case, *City of Pittsburgh* v. *F. P. C.*, 237 F. 2d 751, 754; *Natural Gas Pipeline Company of America*, Docket No. CP62-243, Examiner's Decision issued September 10, 1964. In some certificate cases, indeed, the antitrust laws can assume overriding importance as in *California* v. *F. P. C.*, 369 U.S. 482. Those, however, are cases in which the antitrust issues have so intimate a relationship to the merits of the certificate issues that to decide, or to fail to decide, such questions would fix the positions of the parties beyond any reasonable possibility of subsequent correction. They are, moreover, cases in which the interrelation of rate levels does not lie at the heart of the antitrust questions.

---

[3] The breach of agreement alleged in the quoted paragraphs was not urged at the hearing and is not now relied on (K–N reply br., p. 1).

This is not such a case. Here the question that intervenors attempt to raise is whether the take-or-pay provision in one rate schedule is justified absent a like provision in the other. This is a matter to be decided under the rate sections of the Natural Gas Act. Antitrust questions can, in proper circumstances, be raised in rate cases. *Lynchburg Gas Co.* v. *F.P.C.*, 336 F. 2d 942 (CADC June 26, 1964). Where they can be answered only with reference to rates, it is usually best that they be decided in rate cases, where all relevant considerations may be brought up, including the rate structure of the seller and the supply and requirements situation of the buyer.

The procedure which Kansas-Nebraska here suggests—conditioning the certificate on the filing of a new rate schedule by Colorado Interstate—would probably not avoid a rate case. As previously noted, Colorado Interstate's other customers are entitled to protest against such a filing being allowed to become effective, and a rate case would result from such a protest. And if Colorado Interstate were to seek review of a Commission order imposing such a condition it would be difficult for any court (as it would in the first instance be difficult for the Examiner and the Commission) to determine the merits of Kansas-Nebraska's position without reference to the rate-case matters alluded to above.

In a rate proceeding Kansas-Nebraska, on a properly drawn complaint about the present terms of the rate schedules, could seek a change in the "applicability" portion of the schedule so as to make the P-1 or some other schedule, such as G-1, available to it for any new purchases it might make. Staff counsel took the position at the hearing that the P-1 schedule is already available to it. Whether this is true, and if not whether it should be made true, can be decided in a Section 5 proceeding. (It may be that Paragraph 2 of the P-2 rate schedule[3] prohibits Kansas-Nebraska from buying under the P-1 schedule, but the Examiner makes no finding in this regard since the issue is not before him).

Conceivably, a Section 5 proceeding could result in an order permitting Kansas-Nebraska to make new purchases under P-1 while continuing its present ones under P-2. That would dispose of any claim that there is undue rate discrimination with respect to new business. Plainly, such an order is beyond the scope of the present proceeding, and the Examiner expresses no opinion on whether it would be appropriate in any other. The possibility is mentioned merely to emphasize the undesirability of deciding under Section 7 an antitrust question which a Section 5 proceeding may obviate.

ADDITIONAL FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in this proceeding, including the pleadings, the evidence adduced and the briefs filed, it is found and concluded, in addition to the findings and conclusions heretofore stated, that:

---

[3] Colorado Interstate Gas Co. FPC Gas Tariff First Revised Volume No. 1, Par. 2 of Second Revised Sheet No. 11B, March 17, 1964. No doubt the corresponding provision of other rate schedules would also be considered in a proceeding relative to this issue.

(1) The applicant is engaged in the transportation of natural gas in interstate commerce and the sale in interstate commerce of natural gas for resale for ultimate public consumption and is a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The proposed facilities of the applicant as more fully set forth in its application and the evidence of record in this proceeding, are to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by the applicant are subject to the requirements of Section 7(c) of the Natural Gas Act.

(3) The applicant is able and willing to do the acts and perform the services proposed, and to conform to the provisions of the Natural Gas Act as amended and the rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed delivery of natural gas by applicant are required by the public convenience and necessity and a certificate therefor should be issued.

ORDER

WHEREFORE, *It is Ordered*, that a certificate of public convenience and necessity be and the same is hereby issued authorizing applicant to construct and operate the proposed facilities as hereinbefore described.

ARTHUR H. FRIBOURG,
Presiding Examiner

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

INTERNATIONAL PAPER COMPANY, PROJECT NO. 2375

ORDER ISSUING LICENSE (MAJOR)

(Issued February 18, 1965)

Application was filed on May 31, 1963, by International Paper Company (Applicant) of New York, New York, for a license under Section 4(e) of the Federal Power Act (Act) for constructed Project No. 2375, known as the Otis-Livermore Falls Project, located on the Androscoggin River in the vicinity of the villages of Riley, Jay, Chisholm and Livermore Falls, in the counties of Oxford, Franklin and Androscoggin, Maine.

According to the application, the project, which consists of 4 developments known as Riley Mill, Jay Power Plant, Otis Mill and Livermore Mill, was constructed commencing in 1888 and ending in 1915, except that in October of 1950 and 1956, respectively, the original rock-filled timber crib dam of the Jay Power Plant was replaced by two concrete sections and in connection with Riley Mill, a small concrete wing wall was added and in July, 1936 and in August of 1942 a portion of the timber crib dam extending downstream to the forebay was faced on the downstream side by a concrete gravity section.

By its order issued July 24, 1958,[1] the Commission found that the Androscoggin River throughout its entire length is a "navigable water" as defined in Section 3(8) of the Federal Power Act and "navigable water of the United States" within the meaning of Section 23(b) of the Act. The basis of this finding was that the Androscoggin is presently, and for more than a century has been used for the transportation of logs and other forest products by water.

---

[1] *New Hampshire Water Resources Board,* Docket No. E-6807, 20 FPC 99-101.

The Secretary of the Army and the Chief of Engineers have approved the plans of the project structures affecting navigation, pursuant to Section 4(e) of the Act.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project certain conditions in the interest of fish and wildlife.

The Department of Health, Education, and Welfare has reported that while the impoundments included in the subject application do not constitute a source of pollution, they may increase the severe pollution problems which have developed in the Androscoggin River by reducing the reaeration and natural stream purification rates. However, the Department added that the solution to the pollution problem lies in suitable treatment of effluent wastes prior to discharge rather than in river regulation.

For the reasons set forth in our Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of October 1, 1950 and a termination date of December 31, 1993.

The Commission finds:

(1) Applicant is a corporation organized under the laws of the State of New York, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(2) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(3) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(4) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public use, including recreational purposes.

(5) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is as specified in Article 30 herein, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable.

(6) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of the license for the project, except that portion of Exhibit M which described the transmission lines.[2]

The Commission orders:

(A) This license is hereby issued to International Paper Company (Licensee) of New York, New York, under Section 4(e) of the Federal Power Act (Act) for a period effective as of October 1, 1950 and terminating December 31, 1993, for the continued operation and maintenance of Otis-Livermore Project No. 2375, located on the Androscoggin River, a navigable water of the United States, subject to the terms and conditions of the Act which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

---

[2] We are hereinafter reserving the right to determine at a later date what transmission facilities, if any, should be included in this license as a part of the project works.

(B) Constructed Project No. 2375 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the Licensee or by the United States; such project area and project boundary being more specifically shown and described by the following exhibits which formed a part of the application for license.

Exhibit J: Sheet 1 (FPC No. 2375–1) General Map.

Exhibit K: Detail Map.

Sheet No.	FPC No.	Title: Otis-Livermore Falls Project
1	2375–2	Canton Area Above Riley Dam.
2	2375–3	Riley Mill—Jay Power House Area.
3	2375–4	Riley Plant Site.
4	2375–5	Jay Power Plant Area.
5	2375–6	Otis Mill—Livermore Area.
6	2375–7	Otis Mill Site.
7	2375–8	Livermore Mill Area.

(ii) project works consisting of the following 4 sites: Riley Mill—Located upstream from the village of Riley, with the mill and most of the dam in the town of Jay, Franklin County (a small portion of the dam being in the town of Canton, Oxford County). The development includes: (1) an L-shaped concrete-capped rock-filled timber crib about 649 feet long, including an eight foot log sluice, topped with flashboards (about 50 inches high); (2) a pond of about 578 acres in area; (3) a forebay; (4) a stone masonry forebay headgate section about 108 feet long; (5) a stone masonry forebay wall (about 194 feet long); constituting the south wall of grinder room building with turbine intake headgates; (6) a hydromechanical installation of 23 turbines rated at 300 hp each, and one turbine rated at 350 hp; and (7) appurtenant facilities.

Jay Power Plant—Located in the village of Jay. The development includes: (1) a two-sectioned concrete gravity dam (topped with flashboards about 32 inches high), the west section extending about 319 feet from the right bank to the west shore of Pine Island, and the east section extending about 277 feet from the east shore of Pine Island to the powerhouse; (2) a pond of about 206 acres in area; (3) a forebay; (4) a forebay wall extending about 320 feet upstream from the powerhouse, along the left bank; (5) a powerhouse (about 147 feet long, extending from dam to left bank) including six 620 hp turbines connected to five 500 kva generators and one 625 kva generator; and (6) appurtenant facilities.

Otis Mill—Located at the village of Chisholm. The development includes: (1) a concrete wing wall, about 69 feet long and 4 feet in average height, along the right bank; (2) an L-shaped dam consisting of: (a) a rock-filled timber crib section about 379 feet long (about 18 feet, average height, and topped with two-foot flashboards) extending from the right bank, with a log sluice (about 15 feet wide), and (b) a concrete wall about 198 feet long extending downstream; (3) a stonemasonry forebay headgate structure about 189 feet long extending from the concrete wall to the left bank; (4) a pond about 115 acres in area; (5) a forebay; (6) a masonry forebay spillway; (7) a masonry forebay wall (about 287 feet long) constituting north wall of grinder room building, with turbine intake headgates; (8) a combination hydro-mechanical and hydroelectric installation of six turbines of 895 hp each, 3 hydro-mechanical only and 3 combined hydro-mechanical and hydroelectric (generators rated at 950 kva and 1.0 pf, 750 kva and 0.8 pf, and 1180 kva and 1.0 pf), nine turbines of 576 hp each (hydro-mechanical), one 500 hp and one 775 hp turbine (hydro-mechanical); and (9) appurtenant facilities.

Livermore Mill—Located about ¾ mile downstream from Otis Mill. The development includes: (1) an L-shaped concrete dam and spillway section (average height about 9½ feet and topped by 28 inch flashboards) extending from the right bank about 318 feet, then downstream about 281 feet; (2) a concrete wall and forebay headgate structure (about 250 feet long); (3) a pond about 46 acres in area; (4) a forebay; (5) a concrete forebay spillway section (about 594 feet long); (6) a concrete wall (about 170 feet long) constituting north wall of woodpulp mill building, with turbine intake headgates; (7) a hydro-mechanical and hydroelectric installation of seven turbines of 1200 hp each, 3 hydro-mechanical only and 3 combined hydro-mechanical and hydroelectric (3 generators, each rated 1180 kva and 1.0 pf), and one 1128 hp turbine (hydroelectric only) connected to a 1175 kva—0.85 pf generator; and (8) appurtenant facilities.

The location, nature and character of the project works is more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also formed part of the application for license and which are designated and described as follows:

Exhibit L:

Sheet No.	FPC No.	Title: Otis-Livermore Falls Project
		Riley Mill:
1	2375- 9	Details—Forebay & Head Gates.
2	2375-10	Grinder Room Arrangement.
3	2375-11	Dam Details.
		Jay Power Plant:
4	2375-12	Details of East Dam.
5	2375-13	Details of West Dam.
6	2375-14	General Plan Generators & Water Wheels.
		Otis Mill:
7	2375-15	Details of Dam & Forebay.
8	2375-16	Details—Grinder Room West.
9	2375-17	Details—Grinder Room East.
		Livermore Mill:
10	2375-18	General Plan Details Dam & Forebay.
11	2375-19	Plan of Grinder Room.

Exhibit M:

Twenty typewritten pages, entitled "General Description and Specifications of Mechanical, Electrical and Transmission Equipment and Appurtenances" (except the portion describing transmission lines), filed in the Commission May 31, 1963.

(iii) all of the structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-3, (Revised August 1, 1964) entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States" (32 FPC 1114) which terms and conditions, designated as Articles 1 through 29, are attached hereto and made a part hereof; and subject to the following special conditions set forth herein as additional articles.

Article 30. The Licensee shall pay to the United States the following annual charges:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. Effective as of October 1, 1950, through June 30, 1958, for the Jay Power Plant development the authorized installed capacity for such purposes is 3,300 horsepower. Effective as of July 1, 1958, for the Riley Mill, Jay Power Plant, Otis Mill, and Livermore Mill developments, the authorized installed capacity is 32,100 horsepower.

Article 31. The Commission reserves the right to determine at a later date what transmission facilities, if any, shall be included in this license as part of the project works.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license to the extent indicated therein.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

THE JUPITER CORPORATION, DOCKET NO. RI63-212; TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP65-58

ORDER DEFERRING ACTION ON PETITION FOR DECLARATORY ORDER AND MOTION TO DISMISS PROCEEDINGS IN DOCKET NO. RI63-212, AND DENYING ALTERNATIVE MOTION TO SEVER AND STAY PROCEEDINGS, AND MOTION FOR ORAL ARGUMENT

(Issued February 18, 1965)*

On January 8, 1965, The Jupiter Corporation (Jupiter), the respondent in Docket No. RI63-212, filed with this Commission documents entitled *Petition for Declaratory Order and Motion to Dismiss Proceedings in Docket No. RI63-212, Alternative Motion to Sever and Stay Proceeding* and *Motion for Oral Argument*, respectively.

In the first of those pleadings Jupiter asserted that its Rollover Field operations and facilities are not within the ambit of the Commission's regulatory power under the Natural Gas Act, that Jupiter carries on only exempt gathering processes, that what appears to be a purchase of gas from the producers and the resale thereof to Tennessee Gas Transmission Company is in fact only a gathering operation, and requested the Commission to issue an order declaring that it has no jurisdiction over Jupiter and consistently therewith to dismiss the rate investigation in Docket No. RI63-212.

---

*See order denying reconsideration, etc., issued March 12, 1965, 33 FPC 534.

In the Alternative Motion to Sever and Stay the Proceedings, Jupiter requested that the Commission sever the proceedings in the certificate proceeding, Docket No. CP65-58, from those in the rate investigation proceedings in Docket No. RI63-212 and stay the proceedings in Docket No. RI63-212 until it has issued a final order in Docket No. CP65-58. This motion is based upon the theory that the standards to be used in a rate proceeding differ from those applicable to a certificate proceeding and that in a consolidated proceeding there would probably be a confusion of such standards.

On January 18, 1965, Long Island Lighting Company, an intervenor herein, filed an answer to the motions above-described and on the same day Phillips Petroleum Company and Kerr-McGee Oil Industries, Inc., producer intervenors, filed a joint answer to the petition for a declaratory order and the alternative motion to sever. On February 2, 1965, the Staff of the Commission filed answer and objection to the petition and the motion last above referred to.

The answers to the petition for a declaratory order raise questions of fact which can only be fairly and equitably decided upon a record made after hearing and an opportunity for the presentation of evidence and argument by all of the participants in the proceeding. Since the determination of the question of public convenience and necessity arising in the certificate proceeding cannot be determined in the absence of evidence showing the propriety of the proposed lease rental charges, no useful purpose would be served by severing the rate investigation from the certificate proceeding.

Under the circumstances, there remains no basis for setting these matters down for oral argument before the Commission.

In our order of February 12, 1965, *supra*, p. 204, we rejected Jupiter's request for a further continuance *inter alia* until we could pass upon petitions and orders here disposed of. In the light of actions which have since transpired, we would be willing to provide Jupiter with an additional period of 30 days from the date of this order to prepare and serve its evidence in Docket No. RI63-212 provided Jupiter advises us in writing or by telegram by the close of business on Friday, February 19, 1965, that it will file and serve any such evidence within such additional period. This will give Jupiter the full period originally given for preparation of its evidence, a period of time which Jupiter has never suggested was insufficient for this purpose.

The Commission orders:

(A) The Alternative Motion to Sever and to Stay the Proceedings, and the Motion for Oral Argument, and each of them be, and is, hereby denied.

(B) Action on the Petition for Declaratory Order and Motion to Dismiss Proceedings in Docket No. RI63-212, hereby is deferred for consideration when the record in these proceedings is before us for determination.

(C) The time within which Jupiter is required to file and serve its evidence shall be extended for 30 days from the date of this order provided Jupiter meets the conditions set forth above. In the event Jupiter avails itself of this opportunity all other dates established by our order of February 3, 1965, will be advanced accordingly; otherwise, the dates prescribed by that order shall stand.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UTAH POWER & LIGHT COMPANY, PROJECT NO. 814

ORDER FURTHER AMENDING LICENSE (MAJOR)

(Issued February 18, 1965)

Application was filed on July 2, 1964 under Section 6 of the Federal Power Act (Act) by Utah Power & Light Company, of Salt Lake City, Utah, for further amendment of its license for major Project No. 814, located on LaBaron Creek in Beaver County, Utah. The project affects lands of the United States within the Fishlake National Forest.

The amendment sought would authorize the reconstruction of the LaBaron Dam under an agreement between the licensee and the Utah Fish and Game Department, whereby the Department will reconstruct the dam and increase the storage capacity of LaBaron Reservoir to provide fish culture and develop the area for recreational purposes. Financing of the reconstruction would be by the Department as an Accelerated Public Works Project.

The redevelopment would consist of: a compacted earth filled dam approximately 400 feet long, 26 feet high, 14 feet wide at the top and 140 feet wide at the bottom; a 12-foot by 5-foot concrete spillway; an 18-inch inside diameter concrete outlet pipe controlled by a slide gate; and a reservoir with an area of about 23 acres and a storage capacity of about 257 acre-feet.

The Department of the Interior, in reporting on the application recommended for inclusion in any amendment of the license, certain conditions in the interests of fish and wildlife resources, recreation, and archeological survey and salvage.

The Department of Agriculture, in reporting on the application, advised that it had no objection to the amendment as applied for and that it would not interfere or be inconsistent with the purposes for which the Fishlake National Forest was created or acquired.

The Utah Fish and Game Department advised that it was anxious to proceed with the construction of LaBaron Dam under the Accelerated Public Works Program; the plans had been approved by the U.S. Forest Service and State Engineer of Utah; and that the Department supported the application.

Commission staff studies of the proposed dam show that it is safe and stable and would develop the site for the storage purpose for which it is to be constructed. Inasmuch as the LaBaron Dam is described in Article 2 of the license as a dam and reservoir on LaBaron Creek, known as Blainey Reservoir, a revision in the license description of LaBaron Dam is unnecessary.

By letter dated July 6, 1964, the licensee requested Commission permission for pre-amendment commencement of the reconstruction of the LaBaron Dam for the reason that the Utah Fish and Game Department was anxious to commence construction because the project is located in a high altitude and the construction period is short. By letter dated August 6, 1964, the Commission advised the licensee that any construction prior to Commission action on the application would be at the licensee's risk.

Among other exhibits filed as part of the application, is Exhibit K (FPC No. 814-46) which although generally in conformity with the Commission's rules and regulations, does not show the area of lands of the United States occupied by the enlarged project nor the increase in area over the project as originally proposed. We are herein requiring the licensee to file an amended Exhibit K at a future date.

The Commission finds:

(1) Public notice of the application has been given. No protests or petitions to intervene have been received.

(2) The following described exhibits filed as part of the application conform to the Commission's rules and regulations and should be approved as part of the license for the project, and Exhibit M (FPC No. 814-35) and Exhibit M-2 (FPC No. 814-36), now part of the license and which have been superseded, should be eliminated from the license:

Exhibit K: (FPC 814-46) LaBaron Reservoir Dam Reconstruction; and

Exhibit L: (FPC No. 814-47 and -48) General Design Drawings—LaBaron Reservoir Dam Reconstruction

The Commission orders:

(A) The license for Project No. 814 is hereby further amended, effective as of August 1, 1964, to authorize the reconstruction of the LaBaron Dam in the manner described in the third paragraph of this order, and to include therein the following additional articles:

Article 24. The Licensee shall within one year from the date of issuance of this amendment submit for Commission approval Exhibit K for the enlarged LaBaron Dam and Reservoir prepared in accordance with the Commission's rules and regulations.

Article 25. The Licensee shall, for the conservation, and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance and operation of such facilities and comply with such reasonable modifications of the project structures and operation as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing and upon findings based on substantial evidence that such facilities and modifications are necessary and desirable, reasonably consistent with the primary purpose of the project, and consistent with the provisions of the Act.

Article 26. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of Licensee's lands and interest in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be prescribed by the Commission, reasonably consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 27. The Licensee shall construct, maintain and operate or shall arrange for the construction, maintenance and operation of such recreational facilities including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities and utilities, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal and State agencies, after notice and opportunity for hearing and upon findings based upon substantial evidence that such facilities are necessary and desirable, and reasonably consistent with the primary purpose of the project.

Article 28. The Licensee shall make available to the Department of Anthropology, University of Utah, Salt Lake City, Utah, funds not to exceed a total of $1,000 for the purpose of undertaking a field survey and archeological salvage in the area involved in the reconstruction of the LeBaron Dam.

(B) The exhibits described in finding (2) above as conforming to the Commission's rules and regulations are hereby approved as part of the license, as amended, for Project No. 814, and the exhibits described in the same finding as being superseded are hereby eliminated from the license for the project.

(C) This amendment in the manner set out above shall not operate to alter or amend the license in any other respect, and shall not in any way constitute a waiver of any other part, provision or condition of the license.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of the issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

AREA RATE PROCEEDING, ET AL. (HUGOTON-ANADARKO AREA), DOCKET NO. AR64–1, ET AL.; AREA RATE PROCEEDING, ET AL. (TEXAS GULF COAST AREA), DOCKET NO. AR64–2, ET AL.

ORDER GRANTING APPEAL AND CLARIFYING DEADLINE FOR PRESENTATION OF EVIDENCE

(Issued February 19, 1965)

In our order of January 22, 1965, we set a deadline of May 15, 1965, for the presentation of direct evidence in these proceedings with the proviso that "* * * cost exhibits which are primarily dependent upon data derived from the all-areas questionnaire or data derived from utilization by private parties of FPC Form No. 20 should be deferred beyond May 15, 1965. * * *" 33 FPC 99. At a prehearing conference of January 29, 1965, the Presiding Examiners ruled that, according to the wording of our order, non-cost presentations and exhibits were due on or before May 15 even if they were dependent on data from the all-areas questionnaire or FPC Form No. 20.* Several producer groups have appealed the Examiners' ruling and the Presiding Examiners, finding that extraordinary circumstances existed, referred the appeal to us pursuant to Section 1.28(a) of the Commission's Rules of Practice and Procedure. We grant the appeal. All presentations, including non-cost presentations, which are primarily dependent upon data derived from the all-area questionnaire or which are dependent upon data derived from Form No. 20 should be relieved of the May 15, 1965, deadline. However, when it becomes appropriate to set deadlines for such post-May 15 presentations, the Examiners should fix the earliest reasonable deadlines.

---

*Pursuant to our order of January 25, 1965, in these proceedings, copies of Form 20 have been made available to Hunt Oil Co., *et al.*, and to Oklahoma Independent Petroleum Association for private circulation by them.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

COLUMBIA RIVER BASIN, HEADWATER BENEFIT DETERMINATION, DOCKET NO. E-6384

FINDINGS AND ORDER

(Issued February 19, 1965)

This order determines payments to the United States under subsection 10(f) of the Federal Power Act (16 U.S.C. 803(f)) and approves an agreement for payments to licensees under section 13.1 of the Commission's Regulations under the Federal Power Act for headwater benefits provided to non-Federal licensed projects in the Columbia River basin from September 1, 1963, through August 31, 1964.

No headwater benefits accrued in the Columbia River basin before January 1, 1949.[1] The Commission has fixed payments to the United States for headwater benefits provided from January 1, 1949, through December 31, 1956,[2] and from September 1, 1961, through August 31, 1963.[3] It also has approved payments to licensees for headwater benefits provided to non-Federal projects from September 1, 1961, through August 31, 1963.[4] The Commission has yet to determine payments to the United States for headwater benefits provided from January 1, 1957, through August 31, 1961, and to determine or approve payments to licensees for headwater benefits provided to non-Federal projects from January 1, 1949, through August 31, 1961.

The present determination of payments to the United States is for headwater benefits provided by the Hungry Horse and Grand Coulee projects, operated by the Bureau of Reclamation, and the Albeni Falls project, operated by the Corps of Engineers. The non-Federal projects which received headwater benefits from one or more of these three Federal projects are as follows:

Owner	Project	Project No.
The Montana Power Co	Kerr	5
The Montana Power Co	Thompson Falls	1869
The Washington Water Power Co	Noxon Rapids	2075
The Washington Water Power Co	Cabinet Gorge	2058
Public Utility District No. 1 of Pend Oreille County, Wash.	Box Canyon	2042
Public Utility District No. 1 of Chelan County, Wash	Rocky Reach	2145
Public Utility District No. 1 of Chelan County, Wash	Rock Island	943
Public Utility District No. 2 of Grant County, Wash	Wanapum	2114
Public Utility District No. 2 of Grant County, Wash	Priest Rapids	2114

The method used in the present determination of headwater benefits payments to the United States is similar to the method used in determining these payments from September 1, 1961, through August 31, 1963. This method is described in detail in the Commission's order of February 6, 1963, titled *Columbia River Basin, Headwater Benefit Investigation*, 29 FPC 238. The reallocation of costs for the Grand Coulee project by the Secretary of the Interior and the installation of the Wanapum development, Project No. 2114, by the Public Utility District No. 2 of Grant County account for the differences in annual payments herein and those for the period covered by the earlier order.

---

[1] 11 FPC 832.

[2] 16 FPC 1388 (1956); 20 FPC 807 (1958); 31 FPC 1044 (1964).

[3] 29 FPC 238 (1963).

[4] *Id.*

By letters dated December 17, 1964, the Commission staff informed the Department of the Interior, Corps of Engineers, The Montana Power Company, The Washington Water Power Company, Public Utility No. 1 of Chelan County, Washington, Public Utility District No. 1 of Pend Oreille County, Washington, and Public Utility District No. 2 of Grant County, Washington, that the staff proposed to recommend to the Commission the following headwater benefits payments to the United States:

Payer	Payments to the United States		
	For headwater benefits	For FPC cost of studies	Total
The Montana Power Co.	$188,500	$135	$188,635
The Washington Water Power Co.	251,200	180	251,380
PUD No. 1 of Pend Oreille County	51,600	35	51,635
PUD No. 1 of Chelan County	449,100	320	449,420
PUD No. 2 of Grant County	458,300	330	458,630
Total	1,398,700	1,000	1,399,700

The Department of the Interior, The Montana Power Company, and Public Utility District No. 1 of Chelan County, by letters dated January 14, 1965, January 8, 1965, and January 13, 1965, respectively, responded that the proposed payments were acceptable. The Corps of Engineers by letter of January 8, 1965, stated that it believed that its comments were not needed.

On November 5, 1964, The Washington Water Power Company on behalf of itself and the other non-Federal parties designated above, filed the Pacific Northwest Coordination Agreement executed on September 1, 1963, for approval as a headwater benefits agreement under section 13.1 of the Commission's Regulations under the Federal Power Act. The following headwater benefits payments have been made to licensees by non-Federal parties under the terms of this agreement.

Payer	Payees			
	Montana Power Co.	The Washington Water Power Co.	Pend Oreille PUD No. 1	Chelan PUD No. 1
The Washington Water Power Co.	$67,400			
Pend Oreille PUD	10,200	$4,700		
Chelan PUD	39,300	41,300	$2,400	
Grant PUD	40,000	42,000	2,400	$29,300
Total	156,900	88,000	4,800	29,300

The Commission finds:

(1) It is appropriate and in the public interest in administering Part I of the Federal Power Act (16 U.S.C. 791–823), particularly subsection 10(f) thereof, that payments as described below be made to the United States for headwater benefits provided in the Columbia River basin by its Hungry Horse, Grand Coulee, and Albeni Falls projects to downstream non-Federal projects from September 1, 1963, through August 31, 1964, and for the costs of making the determination.

(2) The Pacific Northwest Coordination Agreement executed on September 1, 1963, under which payments have been made as described above, constitutes an effective and reasonable method of compensating licensees for headwater benefits

provided in the Columbia River basin to non-Federal parties from September 1, 1963, through August 31, 1964.

The Commission orders:

(A) The payments to the United States for headwater benefits provided in the Columbia River basin by its Hungry Horse, Grand Coulee, and Albeni Falls projects to downstream non-Federal projects from September 1, 1963, through August 31, 1964, are assessed under subsection 10(f) of the Federal Power Act as follows:

Payer	*For headwater benefits*
The Montana Power Co	$188,500
The Washington Water Power Co	251,200
PUD No. 1 of Pend Oreille County	51,600
PUD No. 1 of Chelan County	449,100
PUD No. 2 of Grant County	458,300
Total	1,398,700

(B) The several parties shall pay to the Federal Power Commission to defray the cost of making this determination, the sum of $1,000, to be divided as follows:

Payer	*For FPC cost of studies*
The Montana Power Co	$135
The Washington Water Power Co	180
PUD No. 1 of Pend Oreille County	35
PUD No. 1 of Chelan County	320
PUD No. 2 of Grant County	330
Total	1,000

(C) The payments specified in paragraphs (A) and (B) shall be paid within sixty days from the date of issuance of this order.

(D) The payments specified in the Pacific Northwest Coordination Agreement executed on September 1, 1963, are approved under section 13.1 of the Regulations under the Federal Power Act with respect to settlement for headwater benefits provided in the Columbia River basin by licensees to non-Federal projects from September 1, 1963, through August 31, 1964.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

PUBLIC SERVICE COMPANY OF OKLAHOMA, DOCKET NOS. E-7179 AND E-7196

ORDER TERMINATING PROCEEDINGS

(Issued February 19, 1965)

This order terminates two proceedings initiated to insure continuity of wholesale electric supply for wholesale electric customers served by Public Service Company of Oklahoma (Public Service), Tulsa, Oklahoma. Representations by Public Service and upon behalf of the customers affected, the Cities of Altus, Duncan and New Cordell, Oklahoma, show further hearings to be unnecessary.

Initially, the Commission by order of suspension and hearing issued August 26, 1964, Docket No. E-7179, questioned the lawfulness of a provision set forth in Public Service's Rate Schedule FPC No. 159, Supplement No. 2, wherein the company reserved "* * * the option * * * to terminate and cancel * * *" its contractual arrangements providing for wholesale service "* * * in the event any regulatory body having jurisdiction thereof should lawfully decrease the rate chargeable to the City * * *". Under that rate schedule wholesale electric service is rendered to New Cordell. The Commission's second order, issued December 3, 1964, 32 FPC 1396, Docket Nos. E-7179, E-7196, questioned the lawfulness of similar provisions in Public Service's Rate Schedules for service to Altus and Duncan, Oklahoma, FPC No. 23, Supplement No. 5, and FPC No. 126, Supplement No. 3, respectively.

Consideration of the written comments of Public Service and the three cities* concerning the operative effects of the questioned provision indicates that the Company does not thereby seek unfair advantage over its wholesale customers either in conditions of service or continuation thereof. The Commission has full and continuing regulatory authority over all interstate wholesale electric services by Public Service. These include the authority of the Commission to suspend and set for hearing any threatened termination of service and authority of the Commission to direct interconnections and rendition of electric service. See sections 202(b), 205 and 206 of the Federal Power Act; and Sections 35.1, 35.3 and 35.15 of the Commission's Regulations under that Act.

The Commission finds:

It is necessary and appropriate for the purposes of the Federal Power Act, and the Commission's Regulations thereunder, that further proceedings in the above entitled matters be terminated as hereinafter ordered.

The Commission orders:

The proceedings instituted by orders of the Commission issued August 26, 1964, Docket No. E-7179 and December 3, 1964, Docket Nos. E-7179 and E-7196 are hereby terminated.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, ET AL., DOCKET NO. CP64-270, ET AL.

ORDER REJECTING AND DISMISSING APPEAL

(Issued February 19, 1965)

On January 12, 1965, the presiding examiner certified an appeal to the Commission by East Tennessee Natural Gas Company (East Tennessee) from the presiding examiner's rulings on January 5 and 6 in the course of hearings on the competitive applications to provide additional gas supplies to the Chattanooga area. The examiner's ruling excluded certain evidence offered by East Tennessee relating to the voluntary rate reduction to which East Tennessee has committed itself in the event its application in Docket No. CP65-66 is certificated and to the economic impact on the remainder of the East Tennessee system which will be occasioned by certification of a second source of gas supply to the

---

*Letters of Public Service Company of Oklahoma dated November 20, 1964, City of Altus, Oklahoma, dated December 17, 1964, City of Duncan, Oklahoma, dated December 15, 1964 and City of New Cordell, Oklahoma, dated December 16, 1964.

Chattanooga area. As we understand the examiner's statement in excluding the exhibits, he did so in each instance on the grounds, *inter alia*, that the methods used in their preparation were so defective as to defeat their ability to contribute to the proof of the proposition for which they were offered.

A memorandum in support of the appeal certified by the presiding examiner was filed by East Tennessee on January 15. Transcontinental Gas Pipe Line Corporation (Transco), Southern Natural Gas Company (Southern), Chattanooga Gas Company (Chattanooga) and the Commission staff have filed their responses in opposition.

We have reviewed the proffered evidence, the argument of Counsel, the examiner's ruling thereon, and the memoranda in support thereof and appeal therefrom. It is of course fundamental that the presiding examiner be afforded a wide range of discretion in controlling the proceedings before him and in determining the materiality of proffered evidence. Without determining whether evidence of the general type sought to be adduced would ever be material in a proceeding in this nature, we find nothing in the circumstances of this case which necessitates our review of the presiding examiner's ruling at this stage of the proceedings. East Tennessee may, of course, renew its appeal on issuance of the presiding examiner's initial decision.

The Commission finds:

The appeal of East Tennessee from the presiding examiner's rulings on the exclusion of evidence is premature.

The Commission orders:

The appeal of East Tennessee of January 12, 1965, is dismissed as premature.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

UNITED GAS PIPE LINE COMPANY, DOCKET NOS. RP61-18, RP63-1 AND RP65-1

ORDER REJECTING APPLICATION FOR REHEARING AND DENYING REQUEST FOR RECONSIDERATION

(Issued February 19, 1965)

On January 21, 1964, Texas Eastern Transmission Corporation (Texas Eastern) filed an Application for Rehearing of Paragraphs (C) and (D) of our order, issued on December 23, 1964, 32 FPC 1515, in the above-identified dockets. The challenged provisions of that order[1] required United Gas Pipe Line Company (United) to retain certain presently determined and future refunds pending further order of the Commission directing the disposition of such amounts.

Previously, on December 28, 1964, Texas Eastern objected to these retention provisions in a telegram which we treated as a petition for reconsideration, since our interlocutory action requiring retention of such refunds was not subject to rehearing. By order issued on December 31, 1964, 32 FPC 1559, we denied the request for reconsideration.[2]

In its application for rehearing, Texas Eastern advances a number of reasons why it believes any refusal on the Commission's part to order United to pay over the amounts in question to it without condition or limitation would be legally or equitably unsound. We do not believe it necessary or appropriate to consider these claims, here, since they are all considerations which Texas Eastern can restate and which we will consider in reaching our final determination upon the basis of the factual record made in the hearing to be held in this matter.

---

[1] Order Approving Rate Settlement and Requiring Retention of Certain Refunds.

[2] Order Denying Request for Reconsideration of Severable Provision Requiring Retention of Certain Refunds.

Texas Eastern also objects to our previous conclusion that our action in ordering United to hold the amounts pending subsequent deliberation as to the proper disposition was merely interlocutory. Aside from the mere assertion that we erred in so concluding, it states no basis for the contention. We think it is patently incorrect. The fact that as to all other facets of this proceeding we have approved a settlement agreement satisfactory to all parties, including Texas Eastern, we cannot convert into a final determination our intention to conduct further proceedings on the appropriate disposition of refunds United is required to make. Texas Eastern will, of course, be fully heard on all relevant claims before we reach any conclusion adverse to its claims to entitlement to the refunds from United. We reiterate that we have not yet determined whether it is or is not entitled to retain any or all of such amounts.

However, Texas Eastern's apparent view that the Commission must decide the validity of its claims on the pleadings and cannot in the exercise of its discretion defer such determination until after it can do so in the light of a full hearing record in an ancillary proceeding in which other interested parties will also have an opportunity to present factual information and legal arguments they may deem material is clearly lacking in merit. Accordingly, since an application for rehearing does not lie under Section 1.34 of our Rules of Practice and Procedure from interlocutory actions of the Commission and Texas Eastern has advanced nothing to persuade us that we should abandon the course of action prescribed or indicated in Paragraphs (C) and (D) of our order of December 23, 1964, we shall reject the application for rehearing and deny it, considered as a petition for reconsideration.

The Commission orders:

(A) Texas Eastern's Application for Rehearing of Ordering Paragraphs (C) and (D) of our order issued December 23, 1964, hereby is rejected.

(B) Texas Eastern's pleading classified as a request for reconsideration hereby is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

THE ATLANTIC REFINING COMPANY, DOCKET NOS. G-9283 AND G-9284, ET AL.[1]

ORDER AMENDING ORDER TERMINATING PROCEEDINGS, AND PRESCRIBING REFUNDS

(Issued February 23, 1965)

By settlement orders issued herein on October 8, 1964, 32 FPC 933, and on January 6, 1965, 33 FPC 23, we terminated certain Section 4(e) proceedings and did not require refunds in those instances in which the increased rates had not been collected. It now appears that in certain of such proceedings the increased rates were placed in effect, subject to refund, and collected. Accordingly, we shall amend the order herein of January 6, 1965, to provide that Atlantic make appropriate refunds under each of the rate schedules, set forth in the Appendix hereto, where the proposed increased rate was made effective and was charged and collected, subject to refund, from the effective date thereof and the effective date of the settlement rates as provided by the order of October 8, 1964.

---

[1] The additional dockets involved herein are set forth in the Appendix hereto, and the appendix to the order issued herein on January 6, 1965.

The Commission finds:

For the reason hereinbefore set forth, it is appropriate that the order of January 6, 1965, be amended as hereinafter provided.

The Commission orders:

(A) Atlantic shall refund under each of the rate schedules set forth in the Appendix hereto, where the proposed increased rate was charged and collected subject to refund, in accordance with Ordering Paragraphs (D), (E) and (G) of the order of October 8, 1964, and, upon such refund being made the Section 4(e) proceedings listed in the Appendix hereto shall terminate.

(B) Except as hereby amended, the order issued January 6, 1965, shall remain in full force and effect.

APPENDIX

Rate schedule Nos.	Docket Nos.	Proposed increased rate	Effective date of proposed increased rate	Settlement rate
178	RI64-454	13.0536¢	May 18, 1964[1]	13.0¢
179	RI64-454	13.0536¢	May 18, 1964[1]	13.0¢
180	RI64-454	13.0¢	May 18, 1964	13.0¢
192	RI64-454	14.0577¢	June 1, 1964	13.0¢
279	RI64-454	14.04537¢	June 1, 1964	13.0¢
281	RI64-546	13.0551¢	June 23, 1964[1]	13.0¢

[1] Proposed increased rate made effective by appropriate motion, but never charged or collected by Atlantic.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

ATLANTIC SEABOARD CORPORATION, DOCKET NO. RP65-40

ORDER ACCEPTING REVISED TARIFF SHEETS FOR FILING AND APPROVING REFUNDS

(Issued February 23, 1965)*

Atlantic Seaboard Corporation (Seaboard) on January 22, 1965, tendered for filing certain revised tariff sheets to its FPC Gas Tariff, Seventh Revised Volume No. 1.[1] The proposed change in rates[2] would make effective as of January 1, 1965, a reduction in Seaboard's jurisdictional rates of approximately $554,000 based upon sales for the twelve-month period ended December 31, 1964.

The proposed rate filing, which we have docketed as shown above, reflects a reduction in Seaboard's cost of service based upon the reduction in the Federal corporate income tax rate from 52 percent to 50 percent, as applicable to both Seaboard and to its affiliated gas supplier, United Fuel Gas Company (United). Seaboard also proposes to make refunds to its jurisdictional customers in the total amount of $413,056,[3] which reflect the same reduction in Federal income taxes as of March 1, 1964, through December 31, 1964. Seaboard will credit current billing to reflect the proposed reduction in bills previously rendered for service during the monthly periods commencing January 1, 1965.

---

*Reconsideration denied by order issued April 8, 1965, 33 FPC 713.

[1] Fifth Revised Sheets Nos. 26 and 28; Sixth Revised Sheets Nos. 7, 12, 16A and 17A; Seventh Revised Sheets Nos. 22 and 24.

[2] See Appendix A hereto for proposed rate levels.

[3] Exhibit No. 3 of Seaboard's filing sets out the refunds to be paid to each jurisdictional customer.

Seaboard states that the proposed reduction is made pursuant to a letter of intent filed on February 24, 1964, by The Columbia Gas System, Inc., which informed the Commission that Seaboard would file the subject reduction following final determination of its rate levels in Docket No. G–20270, *et al.* On December 24, 1964, 32 FPC 1529, the Commission issued an order in those proceedings approving Seaboard's calculations of prospective rate levels and refunds in accordance with Opinion Nos. 430, 31 FPC 1342 and 430–A, 32 FPC 1106. The proposed filing is not intended to change or otherwise affect these existing obligations of Seaboard.

Seaboard requests the waiver of its compliance with the requirements of the Commission's rules and regulations as may be necessary to permit the tendered tariff sheets to become effective as of January 1, 1965, as proposed. No protest or objections to Seaboard's proposed reduced rates have been received.

The Commission finds:

(1) Good cause exists for waiving the notice requirement of Part 154 of the Commission's Regulations under the Natural Gas Act and for permitting the revised tariff sheets specified above to become effective as of January 1, 1965.

(2) The proposed revised tariff sheets and the rate reductions and refunds as proposed by Seaboard are proper and in the public interest in carrying out the provisions of the Natural Gas Act, and such tariff sheets should be accepted for filing to be effective and the proposed refunds should be approved, as hereinafter provided and ordered.

The Commission orders:

(A) The notice requirement of Part 154 of the Commission's Regulations under the Natural Gas Act is hereby waived and the revised tariff sheets specifically described hereinabove are accepted for filing to be effective as of January 1, 1965, and the refunds proposed by Seaboard as above described are hereby approved.

(B) This order shall not be construed to change or otherwise affect the existing obligations of Seaboard relating to refunds and rate reductions under orders heretofore issued by the Commission in proceedings involving Seaboard; and further, this order is without prejudice to any findings or orders which have been made or which may hereafter be made by the Commission and is without prejudice to any claims or contentions which may be made by the Commission, Seaboard, the Commission staff, or any other party affected by this order, in any proceedings now pending or hereafter instituted by or against Seaboard or any other persons or parties affected by this order.

APPENDIX A

ATLANTIC SEABOARD CORPORATION
COMPARISON OF JURISDICTIONAL RATES

Rate schedules	Rates effective Oct. 1, 1964	Rates proposed to be effective Jan. 1, 1965
CDS-1 & CDS-PR-1:		
Demand	$2.68	$2.68
Commodity	31.09¢	30.82¢
CDS-2 & CDS-PR-2:		
Demand	$2.43	$2.43
Commodity	29.39¢	29.12¢
AOS-1: Commodity	39.90¢	39.63¢
AOS-2: Commodity	37.38¢	37.11¢
IS-1: Commodity	36.00¢	35.73¢
IS-2: Commodity	33.00¢	32.73¢

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and Charles R. Ross.

CAROLINA PIPELINE COMPANY, COMPLAINANT v. SOUTHERN NATURAL GAS COMPANY, DEFENDANT, DOCKET NO. RP63-4

ORDER PROVIDING FOR SUPPLEMENTAL HEARING, PROVIDING FOR PREHEARING CONFERENCE, AND PRESCRIBING PROCEDURES

(Issued February 23, 1965)

This case is before us pursuant to our order issued November 10, 1964, 32 FPC 1294, reopening this case in order to obtain the parties' view respecting whether the record and findings underlying our Opinion No. 423, issued herein on March 30, 1964, 31 FPC 705, (subsequently referred to as the *Carolina* opinion), satisfy the requirements of *Lynchburg Gas Co.* v. *F.P.C.*, 336 F. 2d 942 (CADC-1964). The question presented is what further proceedings, if any, should be undertaken in this case in light of the *Lynchburg* decision.

In our Carolina opinion, we held that Southern Natural Gas Company's (Southern's) CDL-3 and AOL-3 rate schedules applicable to Carolina Pipeline Company (Carolina) do not unduly discriminate against Carolina, and accordingly, we dismissed Carolina's complaint against Southern. Thereafter, Carolina instituted judicial review proceedings with respect to our *Carolina* opinion in the Court of Appeals for the District of Columbia Circuit, designated *Carolina Pipeline Co.* v. *F.P.C.*, No. 18713. When the court subsequently handed down its *Lynchburg* decision, which appeared to involve questions decided in the *Carolina* opinion, we requested the court to remand the *Carolina* review proceeding to us so that we might determine whether the *Carolina* opinion satisfies the requirements of the *Lynchburg* decision.

In their filings made pursuant to our order reopening this case, the Commission's Staff, Carolina, and the Natural Gas Authorities of York, Lancaster and Chester, South Carolina, take the position that the *Carolina* opinion fails to satisfy the requirements of the *Lynchburg* decision, and Staff requests a further hearing to enable those requirements to be met.

Southern, Atlanta Gas Light Company, South Carolina Natural Gas Company, and Savannah Gas Company take the position that the *Lynchburg* decision does not govern the Carolina case because of the differences between the two cases, but that if it does, the *Carolina* opinion satisfies the requirement of the *Lynchburg* decision. Accordingly, they request that the *Carolina* opinion be affirmed without further hearing.

While it is by no means clear that the *Lynchburg* opinion should control this case, we believe a further hearing is warranted to determine on a factual basis whether the requirements of the *Lynchburg* case, as reasonably adapted, should be applied to the *Carolina* case.

Accordingly, we shall provide for a further hearing so that a supplemental record and findings responsive to the *Lynchburg* decision can be made, and the case decided on the basis thereof.

At the supplemental hearing provided for herein, the Examiner should, in the exercise of his judgment, afford the parties opportunity to present further evidence concerning the matters set forth in our order issued January 25, 1963, 29 FPC 149, providing for the original hearing in this case, and concerning such other matters arising subsequent to issuance of the *Carolina* opinion, including developments in Docket No. CP64–270, *et al.*, and RP64–31, involving proposed new service and rate changes on Southern's system, as may be relevant and material to the issues in this case; however, the Examiner shall not receive unduly duplicative or cumulative evidence.

For the purpose of expediting this proceeding, the Presiding Examiner shall hold a prehearing conference prior to the supplemental hearing, or any other conference he may find appropriate to convene, in conformity with the Commission's Rules of Practice and Procedure, and as further provided by this order. All matters which can be resolved without formal trial should be eliminated from hearing and stipulated to or settled.

The Commission finds:

It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the matters and issues described hereinabove be determined by public hearing and that the proceeding be expedited in accordance with the procedures set out below.

The Commission orders:

(A) Pursuant to the authority conferred upon the Federal Power Commission by the Natural Gas Act, particularly Sections 4 and 15 thereof, the Commission's Rules of Practice and Procedure, and the Regulations under the Natural Gas Act (18 CFR, Chapter I), a supplemental hearing shall be held concerning the matters involved and the issues presented in this proceeding, as described hereinabove.

(B) Without limitation upon the authority of the Presiding Examiner to convene prehearing conferences subsequent to the date herein fixed, pursuant to the provisions of Section 1.18 of the Commission's Rules of Practice and Procedure, a prehearing conference before the Presiding Examiner herein designated shall commence at 10:00 a.m. (EDST) on April 27, 1965, in a hearing room of the Federal Power Commission, 441 G Street, N.W., Washington, D.C., for the purpose of effectuating the intent of the Commission as hereinabove set out in the body of this order.

(C) At the hearing herein, Carolina shall have the burden of proof and the obligation of going forward first with the presentation of its direct case-in-chief.

(D) Carolina shall serve its prepared testimony and exhibits of its case-in-chief upon all parties, on or before March 22, 1965.

(E) Southern shall serve the prepared testimony and exhibits of its direct case upon all parties on or before April 19, 1965.

(F) The Commission staff and all other parties to this proceeding proposing to present evidence herein, shall serve the prepared testimony and exhibits of their direct cases on all parties on or before May 28, 1965.

(G) The Chief Examiner shall designate a hearing officer to preside at the prehearing conferences and the hearing in this matter (see delegation of authority, 27 F.R. 4276, etc.), pursuant to the Commission's Rules of Practice and Procedure, and as futher provided by this order.

(H) Notices and petitions to intervene may be filed with the Federal Power Commission, Washington, D.C., 20426, in accordance with the Commission's Rules of Practice and Procedure, Sections 1.8 and 1.37(f) [18 CFR 1.8 and 1.37(f)] on or before March 15, 1965.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP65–216

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 23, 1965)

On January 14, 1965, Cities Service Gas Company (Applicant) filed in Docket No. CP65–216 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of natural gas to The Gas Service Company (Gas Service) under Applicant's FPC Gas Rate Schedules F–2, C–2 and I–2 for resale in and about the City of Exeter, Missouri. The proposed sale to be made through Applicant's meter and regulator facilities, now in operation, all as more fully described in the application.

The estimated third year peak day and annual natural gas requirements for the proposed service to the City of Exeter are 160 Mcf and 15,435 Mcf at 14.73 psia, respectively.

Applicant states that Gas Service has been duly authorized by a franchise from the City of Exeter to construct and operate a distribution system therein and furthermore that the Public Service Commission of Missouri has authorized Gas Service to construct, operate and maintain facilities to connect its existing system with the proposed new distribution system.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on February 18, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G–298 (4 FPC 471).

(2) The sale and delivery of natural gas hereinbefore described, as more fully described in the application in this proceeding, are to be made in interstate commerce, subject to the jurisdiction of the Commission and are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The sale and delivery of natural gas proposed by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Cities Service Gas Company, to sell and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b) and (e) of Section 157.20 of such Regulations.

(C) The sale and delivery hereby authorized shall commence, as provided by paragraph (b) of Section 157.20 of the Commission Regulations, within six months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

MISSOURI POWER & LIGHT COMPANY, DOCKET NO. CP65–170

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTIONS OF FACILITIES AND SALE OF NATURAL GAS

(Issued February 23, 1965)

On December 14, 1964, Missouri Power & Light Company (Applicant) filed in Docket No. CP65–170 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Panhandle Eastern Pipe Line Company (Panhandle) to establish physical connection of its natural gas transmission system with Applicant's proposed distribution systems located at eleven points, in the central area of Missouri and to sell and deliver natural gas to Applicant for resale and distribution in fourteen communities in said area, all as more fully described in the application.

Applicant proposes to construct and operate distribution facilities in each of the following communities in Missouri: Prairie Home, Auxvasse, Center, Clark, Rocheport, Renick, Elston-St. Martins, Centertown, Russellville, Lohman, Cedar City, Holts Summit and New Bloomfield, all in the State of Missouri. The application states that in order to provide service to these communities, eight new connections with Panhandle are required. Separate connections are required for Prairie Home, Auxvasse, Center, Clark, Rocheport and Renick; one for Elston-St. Martins; and one for Centertown, Russellville and Lohman. Cedar City, Holts Summit and New Bloomfield will be served from an extension of the Jefferson City, Missouri distribution system of Applicant, which is presently supplied by Panhandle.

Applicant further states in the application that it has obtained the necessary franchises from all of the communities and villages to be served by it and that a certificate issued by the Public Service Commission of the State of Missouri authorizes the construction and operation of the additions to Applicant's system in that State.

The estimated volumes of natural gas necessary to meet the third year annual and maximum day requirements are estimated to be 254,698 Mcf and 2,762 Mcf respectively.

The total estimated cost of Applicant's proposed distribution systems and lateral transmission lines is $1,626,660, which will be financed with treasury cash and proceeds from unsecured short-term bank loans.

On January 6, 1965, Panhandle filed a statement with the Commission in response to the application herein saying that it does not object to the issuance of the order requested by the Applicant.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on January 7, 1965 (30 F.R. 176). No protest, petition to intervene or notice of intervention in opposition to the granting of the application has been filed.

The Commission finds:

(1) Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G–254 (4 FPC 1081).

(2) Applicant is a public utility company in the State of Missouri and is authorized to construct and operate the facilities proposed and to distribute and sell natural gas to inhabitants of the communities and villages and to customers along its pipeline system in the area.

(3) It is necessary and desirable in the public interest that Panhandle be directed to establish physical connections of its transportation facilities with the facilities proposed by Applicant and to sell and deliver to Applicant its daily and annual requirements of natural gas, as set forth in the application and as hereinafter ordered and conditioned.

(4) The requirement that Panhandle serve the Applicant, as requested, will not place an undue burden upon it nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Panhandle Eastern Pipe Line Company be and is hereby directed to establish physical connections of its natural gas transmission system with the facilities of the Applicant and to sell and deliver up to 2,762 Mcf of additional natural gas per day to Applicant, all as hereinbefore stated and as more fully described in the application.

(B) Applicant shall be prepared to receive natural gas from Panhandle within one year from the date of this order.

(C) Applicant shall execute a service agreement with Panhandle in accordance with the Commission's Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNITED FUEL GAS COMPANY, DOCKET NO. RP65-39

ORDER ACCEPTING REVISED TARIFF SHEETS FOR FILING AND APPROVING REFUNDS

(Issued February 23, 1965)*

United Fuel Gas Company (United) on January 22, 1965, tendered for filing certain revised tariff sheets to its FPC Gas Tariff, Fifth Revised Volume No. 1[1] The proposed change in rates[2] would make effective as of January 1, 1965, a reduction in United's jurisdictional rates of approximately $913,000, based upon sales for the twelve-months' period ended December 31, 1964.

---

*Reconsideration denied by order issued April 8, 1965, 33 FPC 713.

[1] First Revised Sheet No. 30, Sixth Revised Sheet Nos. 7, 27, and 33 and Seventh Revised Sheet No. 22.

[2] Appendix A hereto for proposed rate levels.

The proposed rate filing, which we have docketed as shown above, reflects a reduction in United's cost of service based upon the reduction in the Federal corporate income tax rate from 52 percent to 50 percent, as applicable to both United and to its affiliated gas supplier, Columbia Gulf Transmission Company (Columbia Gulf). United also proposed to make refunds to its jurisdictional customers in the total amount of $719,890,[3] which would reflect the same reduction in Federal income taxes as of March 1, 1964, through December 31, 1964. United will credit current billing to reflect the proposed reduction in bills previously rendered for service during the monthly periods commencing January 1, 1965.

United states that the proposed reduction is made pursuant to a letter of intent filed on February 24, 1964, by The Columbia Gas System, Inc., which informed the Commission that United would file the subject reduction following final determination of its rate levels in Docket No. G–20270, *et al.* On December 24, 1964, 32 FPC 1529, the Commission issued an order in those proceedings approving United's calculations of the prospective rate levels and refunds in accordance with Opinion Nos. 430, 31 FPC 1342 and 430–A, 32 FPC 1106.

The proposed filing is not intended to change or otherwise affect the existing obligations of United under the settlement agreement in Docket No. G–20270 or the Commission's orders therein.

United requests the waiver of its compliance with the requirements of the Commission's rules and regulations as may be necessary to permit the tendered tariff sheets to become effective as of January 1, 1965, as proposed. No protests or objections to United's proposed reduced rates have been received.

The Commission finds:

(1) Good cause exists for waiving the notice requirement of Part 154 of the Commission's Regulations under the Natural Gas Act, and for permitting the revised tariff sheets specified above to become effective as of January 1, 1965.

(2) The proposed revised tariff sheets and the rate reductions and refunds as proposed by United are proper and in the public interest in carrying out the provisions of the Natural Gas Act, and such tariff sheets should be accepted for filing to be effective and the proposed refunds should be approved, as hereinafter provided and ordered.

The Commission orders:

(A) The notice requirement of Part 154 of the Commission's Regulations under the Natural Gas Act is hereby waived and the revised tariff sheets specifically described hereinabove are accepted for filing to be effective as of January 1, 1965, and the refunds proposed by United as above described are hereby approved.

(B) This order shall not be construed to change or otherwise affect the existing obligations of United relating to refunds and rate reductions under orders heretofore issued by the Commission in proceedings involving United; and further, this order is without prejudice to any findings or orders which have been made or which may hereafter be made by the Commission, and is without prejudice to any claims or contentions which may be made by the Commission, United, the Commission staff, or any other party affected by this order, in any proceedings now pending or hereafter instituted by or against United or any other persons or parties affected by this order.

---

[3] Exhibit No. 3 of United's filing sets forth the refunds to be paid to each jurisdictional customer.

APPENDIX A

UNITED FUEL GAS COMPANY
COMPARISON OF JURISDICTIONAL RATES

Rate schedules	Rates effective Oct. 1, 1964	Rates proposed to be effective Jan. 1, 1965
CDS-1:		
Demand	$1.98	$1.98
Commodity	28.81¢	28.64¢
AOS-1: Commodity	35.32¢	35.15¢
SGS-1: Commodity	45.09¢	44.92¢
SGS-2: Commodity	45.65¢	45.48¢
ES-1: Commodity	45.09¢	44.92¢

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

UTAH POWER & LIGHT COMPANY, DOCKET NO. E-7127

ORDER TERMINATING PROCEEDING IN DOCKET NO. E-7127 AND DIRECTING THE FILING OF RATE SCHEDULES

(Issued February 23, 1965)

This order terminates a rate proceeding previously initiated with respect to certain wholesale rates of the Utah Power & Light Company (Utah) and directs Utah to file its rate schedules for the wheeling of United States Bureau of Reclamation (Bureau) energy to Bureau pumping loads and to 28 preference customers (23 municipally owned, five cooperatives).

On September 30, 1963, 30 FPC 885, the Commission suspended a number of rate increase filings which had been made by Utah with respect to its service to 36 municipal, cooperative, and investor owned resale customers, and designated the proceeding for hearing to determine the lawfulness of such rates and charges pursuant to the provisions of Sections 205 and 206 of the Federal Power Act. Data subsequently secured as a result of a staff field investigation of Utah's rates and charges, in the light of the reduced present level of its wholesale sales, indicate that they do not result in an excessive return when tested in accordance with this Commission's established rate making principles. The results of the staff studies and investigation have been discussed with representatives of Utah's wholesale customers, as well as the Company itself. Though certain of Utah's wholesale customers individually and through an association of resale purchasers (Intermountain Consumer Power Association) had initially complained against Utah's rates, no customer has maintained this position subsequent to being advised of the results of the staff investigation and the Association, by letter of August 25, 1964, has advised the Commission that the customers represented no longer wish to pursue their objections. Under these circumstances, we are convinced that no further proceedings in Docket No. E-7127 are warranted.

During 1964, 25 of Utah's resale customers became customers of the Bureau and all but three of these ceased purchasing any power from Utah. Though informally requested to do so, Utah to date has not filed its rate schedules for such transmission or wheeling charges. It seems clear from the information in our possession that these operations by Utah involve transmission of electric energy in interstate commerce within the meaning of Section 201 of the Federal Power Act and that accordingly Utah is under an obligation pursuant to Section 205 of the Act to file its rate schedules for such service with this Commission. The energy transmitted by Utah to the Bureau's preferential customers in Utah and Idaho originates at least in part from sources outside of the State of Utah. The fact that Utah, a public utility within the meaning of Section 201 of the Federal Power Act is performing this paid transportation service for an agency of the federal government whose own operations are not subject to the jurisdiction of this Commission under the Federal Power Act is clearly beside the point. See *United States* v. *Public Utilities Commission of California*, 345 U.S. 295; *Hartford Electric Light Co.* v. *F.P.C.*, 131 F. 2d 953, 956–58, CA-2; *City of Colton* v. *Southern California Edison Co.*, 26 FPC 223, 228; *Aluminum Company of America, et al.*, 13 FPC 14, 21–22.

Accordingly, the Commission finds:

(1) It is necessary and appropriate for purposes of the Federal Power Act that the proceeding in Docket No. E–7127 be terminated.

(2) Utah, a public utility within the meaning of Section 201 of the Federal Power Act, is obligated to file with the Commission its rate schedules for transmitting or wheeling power to the Bureau's customers in Utah and Idaho.

The Commission orders:

(A) The proceeding in Docket No. E–7127, initiated by order of the Commission issued September 30, 1963, is hereby terminated.

(B) Utah is directed within 30 days from the date of this order to file with the Commission, in conformity with the provisions of our Rules of Practice and Procedure and Regulations under the Federal Power Act, all of its rate schedules for transmitting or wheeling electric energy or power to the Bureau's customers in Utah and Idaho.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

COASTAL STATES GAS PRODUCING COMPANY AND TEX-STAR OIL & GAS CORPORATION, DOCKET NO. RI65–89

ORDER ACCEPTING OFFER OF SETTLEMENT, AND TERMINATING PROCEEDING

(Issued February 24, 1965)

On January 14, 1965, Coastal States Gas Producing Company (Coastal) submitted offers of settlement, pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure, involving sales of natural gas to Trunkline Gas Company (Trunkline) under Coastal's FPC Gas Rate Schedules Nos. 1 and 3 in Hidalgo and Jim Wells Counties, Texas (Texas R. R. Co. District #4). Under the terms of the offers, Coastal proposes to eliminate the favored-nation and price redetermination provisions from the rate schedules, and to amend the periodic escalation provision thereof, and to establish a 14.6¢ per Mcf rate for the subject sales.[1] With its offers, Coastal filed notices of change in the rate schedules, and Trunkline's agreement thereto, to effectuate the terms of the proposals.[2] No protests or objections have been filed to the offers.

---

[1] The settlement rates include 0.25¢ per Mcf dehydration charge paid to Coastal by Trunkline.

Texas Oil and Gas Corp. (Texas Oil)[3] is one of several producers who sell Coastal a portion of the gas Coastal sells to Trunkline in Hidalgo County. Texas Oil is presently charging and collecting 10.096¢ per Mcf for gas sold to Coastal subject to refund pursuant to an order of the Commission issued on July 24, 1964 in Docket No. RI65–89. Texas Oil's proposed increase in rate was suspended because the price redetermination clause in Coastal's might have permitted Coastal to file a proposed increase rate above applicable area ceiling. Since, under the terms of the offer of settlement approved herein, the price redetermination clause will be eliminated from Coastal's contract with Trunkline, good cause exists to terminate the proceedings in Docket No. RI65–89 and to relieve Texas Oil of any refund obligation thereunder.

The proposed settlements are consistent with the provisions of the Second Amendment to the Commission's Statement of General Policy No. 61–1, issued December 20, 1960, 24 FPC 1107, as amended by Order No. 264, issued March 27, 1963, 29 FPC 589, and their acceptance would serve the public interest.

However, we desire to make it clear that acceptance of Coastal's offers of settlement shall not be construed as approval of any future increased rate filed in accordance with its reservations of the right to file increases under the subject rate schedules, and is without prejudice to any findings or order of the Commission in any future proceedings including area rate or other similar proceedings, involving Coastal's rates and rate schedules.

The Commission finds:

The proposed settlement of each of the above-designated matters on the basis described herein, as more fully set forth in the offers of settlement filed with the Commission by Coastal on January 14, 1965, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offers of settlement filed with the Commission by Coastal January 14, 1965, are hereby approved in accordance with the provisions of this order.

(B) Supplement No. 11 to Rate Schedule No. 1, and Supplement No. 4 to Rate Schedule No. 3 filed by Coastal with the offers of settlement herein on January 14, 1965, are hereby accepted for filing, and the rates and charges of 14.6¢ per Mcf at 14.65 psia, specified in said offers shall be effective as of the date of issuance of this order.

(C) The proceeding in Docket No. RI65–89 is hereby terminated and the refund obligation imposed upon Texas Oil by order issued July 24, 1964, in that proceeding is hereby discharged.

(D) The acceptance by the Commission of Coastal's offers of settlement and the termination of Docket No. RI65–89 are without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Coastal or Texas Oil, including area or other similar proceedings.

---

[2] The notices of change are designated as Supplement Nos. 11 and 4 to Coastal's FPC Gas Rate Schedules Nos. 1 and 3. An amendatory agreement effectuating the terms of the proposal is included in each notice.

[3] Formerly Tex-Star Oil & Gas Corporation.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, DOCKET NO. E-7152

ORDER AUTHORIZING ACQUISITION AND MERGER OR CONSOLIDATION OF FACILITIES

(Issued February 24, 1965)

Public Service Company of New Hampshire (Public Service), incorporated under the laws of the State of New Hampshire and qualified to do business in that State and the States of Maine and Vermont, with its principal business office in Manchester, New Hampshire, filed an application on February 26, 1964, as supplemented, seeking authority to acquire, merge and consolidate with its facilities, all of the facilities of Swans Falls Company, created by a Declaration of Trust under the laws of the State of Maine and doing business in that State with its principal business office in Manchester, New Hampshire.

Public Service, with its subsidiaries, New Hampshire Electric Company, Kittery Electric Light Company, and Swans Falls Company, owns and operates a single integrated system engaged in the generation, purchase and transmission of electricity and its sale to the public in ten cities and one hundred eighty other communities in New Hampshire, to nine communities in the State of Maine and six communities in the State of Vermont, and the sale at wholesale to ten other electric utilities. Service to the public in New Hampshire is carried on in the Counties of Belknap, Carroll, Cheshire, Coos, Grafton, Hillsborough, Merrimack, Rockingham, Strafford and Sullivan; in Maine in the Counties of Oxford and York; and in Vermont in the County of Essex.

Swans Falls is a common law trust. Its entire assets consist of a hydroelectric development on the Saco River in Fryeburg, Maine, having a nameplate rating of 640 kw, cash and other current assets. It is solely engaged in the generation of electrical energy and the sale thereof at actual cost at Fryeburg, Maine, to Public Service.

According to the application, Public Service proposes to surrender to Swans Falls for cancellation all of the outstanding shares of beneficial interest of Swans Falls and to assume all of Swans Falls' debts and obligations in exchange for the transfer to Public Service of all the assets of Swans Falls. Swans Falls proposes to transfer to Public Service all of its operating facilities which consist of a hydroelectric plant having a nameplate capacity of 640 kw. The entire output of this plant, which has averaged less than 2,500,000 kwh per year over the last ten years, is sold and delivered at cost to Public Service. The proposed use of the output of such plant after transfer to Public Service will be identical with the present use.

The facilities proposed to be transferred are to be transferred at original cost. On the books of Public Service, its investment in Swans Falls is recorded at $150,000 and Swans Falls has net assets of $150,000. According to the application, the hydroelectric facilities to be transferred may be retired from service within the next decade because of economic obsolescence. The application indicates that some tax benefits will accrue to Public Service if the plant is owned directly by Public Service at the time of its retirement. The application states that heretofore Swans Falls has sold its entire output to Public Service at cost and therefore, there will be no increase in the cost of power generated due to the consolidation of assets. The application also notes that in terminating the existence of Swans Falls the corporate structure of the Public Service system, and its operations, will be simplified.

Public Service has also requested that the hydroelectric facilities to be transferred be licensed by the Federal Power Commission. By order issued concurrently herewith, entitled Project No. 2481, we approve issuance of a license for that project.

Written notice of the application has been given to the Public Utilities Commission of Maine, the Public Utilities Commission of New Hampshire, and the Public Service Board of Vermont. Notice was also published in the Federal Register on March 11, 1964 (29 F.R. 3251), stating that any person desiring to be heard or to make any protest with reference to the application, should on or before March 23, 1964, file petitions or protests with the Federal Power Commission, Washington, D.C., 20426. No petition or protest or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, Public Service, is the owner of facilities used for the transmission of electric energy generated outside the State in which it is consumed, which facilities are in addition to, and do not include facilities used for the generation of electric energy or facilities used in local distribution or only for the transmission of electric energy consumed wholly by the transmitter. Public Service is therefore, a public utility within the meaning of that term as used in Section 203 of the Federal Power Act.

(2) By the proposed transaction, as described above, Public Service will acquire and merge or consolidate with its facilities subject to the jurisdiction of the Commission, all of the facilities of Swans Falls, another person, within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed acquisition of Swans Falls' facilities by Public Service will be consistent with the public interest, as expressed in Section 203 of the Act, for the reasons set forth in the recital above.

(4) The period of public notice herein is reasonable.

The Commission orders:

(A) The proposed acquisition and merger or consolidation of the facilities of Swans Falls by Public Service, all as described above, is hereby authorized and approved upon the terms and conditions set forth in the application, subject to the provisions of this order.

(B) Public Service shall record the transaction herein authorized and the facilities and properties referred to above, as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) This authorization shall expire unless the transaction herein authorized is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission or any other regulatory body.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, PROJECT NO. 2481

ORDER ISSUING LICENSE (MINOR)

(Issued February 24, 1965)*

Application was filed on July 2, 1964, by Public Service Company of New Hampshire (Applicant) for a license under Section 4(e) of the Federal Power Act (Act) for constructed Project No. 2481, known as the Swans Falls Hydroelectric Plant, located on the Saco River, in the Town of Fryeburg, Oxford County, Maine, and the Town of Conway, Carroll County, New Hampshire. No lands of the United States are affected by the project.

According to the application, the first of the three sections of the project dam, which section is of timber crib, was completed in 1918; the second reinforced concrete spillway section at the south end of the timber crib section was completed in 1924; and the third section, a concrete spillway on the north end of the timber crib section was constructed in 1936. The intake canal was modified in 1936 also.

The Secretary of the Army and the Chief of Engineers have advised that the plans of the project structures affecting navigation are satisfactory insofar as the interests of navigation are concerned.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project certain conditions for the conservation and protection of fishery and wildlife resources.

The Department of Health, Education, and Welfare has advised that the project does not presently have any adverse effects on water supply, water pollution control, or vector control, and none is anticipated.

In our order on rehearing issued February 17, 1965, in *Wisconsin Power & Light Company, Project No. 2347, et al., supra*, p. 275, we stated that we would have no objection to the issuance of licenses for minor projects without waiving Sections 14 and 15 of the Federal Power Act and the other provisions of the Act necessary to the effectuation of those sections, provided the minor project applications are timely supplemented pursuant to Section 4.50 of our Regulations under the Act (18 CFR § 4.50), which relates to applications for major projects. In the event the Applicant herein wishes a license in which those provisions of the Act are not waived it should so advise us within 30 days from the date of issuance of this order and file its supplemental application within 30 additional days thereafter.

In its Findings and Order issued July 5, 1955, in Docket No. E-6610 (14 FPC 839), the Commission found that the Saco River from its mouth upstream at least to Conway, New Hampshire, is a navigable water of the United States. The Swans Falls Hydroelectric Plant is located within this reach of the Saco River.

For the reasons set forth in our Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of January 1, 1938 and a termination date of December 31, 1988.

The Commission finds:

(1) The project affects navigable waters of the United States.

---

*Rehearing granted by order issued April 23, 1965. License modified by order of May 5, 1965, 33 FPC 885, 963.

(2) Applicant is a corporation organized under the laws of the State of New Hampshire, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 840 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(7) It will be in the public interest to waive pursuant to Section 10(i) of the Act the terms and conditions contained in the following sections of Part I of the Act:

Section 4(b), except the second sentence thereof; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 14, except insofar as the power of condemnation is reserved; 15; 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

The Commission orders:

(A) This license is hereby issued to Public Service Company of New Hampshire (Licensee), of Manchester, New Hampshire, under Sections 4(e) and 10(i) of the Federal Power Act (Act), for a period effective as of January 1, 1938 and terminating December 31, 1988, for the continued operation and maintenance of the Swans Falls Project No. 2481, located on the Saco River, a navigable water of the United States, in Oxford County, Maine, and Carroll County, New Hampshire subject to the terms and conditions of the Act which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Swans Falls Project No. 2481 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined.

(ii) (1) a dam with timber crib section of 246 feet long, a reinforced spillway section 85 feet long, and a concrete spillway section 105 feet long; (2) the intake canal with 2–7 foot by 12 foot wooden waste gates; (3) a concrete and brick powerhouse containing two 475 horsepower turbines, each connected to a 400 kva Westinghouse generator, the total installed capacity of the units being 640 kw.

(iii) all other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, and all rights and interests, the possession of which is necessary or appropriate in the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-9 (July 1, 1964) entitled "Terms and Conditions of License for Constructed Minor Project Affecting Navigable Waters of the United States" (32 FPC 577), which terms and conditions, designated as Articles 1 through 11, are attached hereto, and made a part hereof; and subject to the following special conditions set forth herein as additional articles:

Article 12. For the purpose of reimbursing the United States for the costs of Administration of Part I of the Act the Licensee shall pay to the United States the following annual charges:

(i) From the effective date of the license, January 1, 1938, through March 31, 1962, $5.00 per annum; and

(ii) From April 1, 1962, $42.00 per annum.

Article 13. The Licensee shall, within one year from the date of this license, file with the Commission for approval its proposed recreational use plan for the project. The plan shall be prepared after consultation with appropriate Federal, State and local agencies, and shall include recreational improvements which may be provided by others in addition to the improvements the Licensee plans to provide.

Article 14. The Licensee shall, for the conservation, and development of fish resources, construct, maintain, and operate, or arrange for the construction, maintenance and operation of such fish passage facilities and comply with such reasonable modifications of the project structures and operations as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing and upon findings based on substantial evidence that such facilities and modifications are necessary and desirable, reasonably consistent with the primary purpose of the project, and consistent with the provisions of the Act.

(D) The terms and conditions of the Act which it has been found above to be in the public interest to waive, are hereby eliminated from this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

FINCH, PRUYN & COMPANY, INCORPORATED, PROJECT NO. 2385

ORDER ISSUING LICENSE (MAJOR)*

(Issued February 25, 1965)

Application was filed on July 10, 1963, and supplemented on July 18, 1963 and April 3, 1964, by Finch, Pruyn & Company, Incorporated (Applicant) of Glens Falls, New York, for a license under Section 4(e) of the Federal Power Act (Act) for constructed Project No. 2385, known as the Finch, Pruyn Hydroelectric Project, located on the Hudson River, a navigable waterway of the United States,[1] in Warren County, New York, in the vicinity of the City of Glens Falls. No lands of the United States are affected by the project.

---

*Rehearing granted by order issued April 16, 1965 [unreported].

Power has been developed continuously at this site since sometime prior to 1845. In 1865 Jeremiah Finch, Samuel Pruyn and three other individuals acquired ownership to one-half of the dam between Glens Falls and South Glens Falls and related water rights and generating facilities, and in 1904 formed the corporation as it is presently known, Finch, Pruyn & Company, Incorporated. In 1914 and 1915 Applicant and Niagara Mohawk Power Company,[2] owner of the other half of the dam, rebuilt the wooden dam as a concrete structure, and in 1923 and 1924 raised the top of the dam to its present elevation. The powerhouse originally provided for six generating units but was modified by the removal of one unit and sealing the intake. At present there are four generating units, the last of which was installed subsequent to the filing of the subject application for license, but which was included in the application by the aforementioned April 3, 1964 supplement.

The Secretary of the Army and the Chief of Engineers have approved the plans of the project structures affecting navigation pursuant to the provisions of Section 4(e) of the Act.

The Department of the Interior, in reporting on the application, has advised that the project has no significant effect on fish and wildlife or on the recreational resources, and that no special conditions in the interest of these resources are necessary for inclusion in any license for the project.

The Department of Health, Education, and Welfare has advised that the project has no adverse effects on water supply or water quality control and that none is expected.

While Applicant filed as part of its application an Exhibit R, it has not filed a recreational use plan appropriate for approval. By Article 31 herein we are requiring Applicant to cooperate with Federal, State and local agencies in the interest of recreation in connection with the use of project lands and waters by the public and to keep us advised at stated intervals with respect to the results.

In accordance with the criteria set forth in our April 25, 1962 Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of April 1, 1949 and a termination date of December 31, 1993.

The Commission finds:

(1) The project is located upon a navigable waterway of the United States.

(2) Applicant is a corporation organized under the laws of the State of New York, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

---

[1] Docket No. DI-177, New York Power and Light Corp., Order issued April 18, 1949 (8 FPC 231-250).

[2] Application for license for Niagara's half of the dam is pending and has been designated as Project No. 2482.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 13,100 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable.

(7) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of this license.

The Commission orders:

(A) This license is hereby issued to Finch, Pruyn & Company, Incorporated, under Section 4(e) of the Federal Power Act (Act), for a period effective as of April 1, 1949 and terminating December 31, 1993, for the continued operation and maintenance of the Finch, Pruyn Hydroelectric Project No. 2385, located on the Hudson River, a navigable water of the United States, subject to the terms and conditions of the Act, which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2385 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the Licensee or by the United States; such project area and project boundary being more specifically shown and described by the following exhibits which formed a part of the application for license.

Exhibit J: Sheet 1 (FPC No. 2385–1) General Map of Project Area;

Exhibit K: Sheet 1 (FPC No. 2385–2) Detail Map of Project Area.

(ii) project works consisting of: (1) that section of a reinforced concrete dam across the Hudson River between the City of Glens Falls and the Village of South Glens Falls owned by the Licensee and situated within Warren County (368.5 feet), which section contains 5 feet of flashboards, a head gate structure about 96 feet long with 8 hand operated gates controlling the flow of the river to the forebay; (2) a powerhouse forebay canal averaging 80 feet in width formed by the natural river bank on the left, and having a concrete floor slab and reinforced concrete overflow wall 550 feet long (with a crest elevation at 266.16 feet Barge Canal Datum) topped by flashboards about 5 feet in height; (3) a powerhouse 136 feet long containing four operating units consisting of four turbines rated at 3,240 hp, 2,600 hp, 2,600 hp, and 3,400 hp, at a head of 42 feet, directly connected to generators rated at 2,500 kw, 2,000 kw, 2,500 kw, and 2,840 kw, respectively; and (4) appurtenant electrical and mechanical facilities: the location and character of which are more fully shown and described by the exhibits hereinbefore cited and by other exhibits which are designated and described as follows:

Exhibit L: Sheet 1 (FPC No. 2385–5) Amended General Plan of Project Structures; and

Exhibit M: Two typewritten pages, "Amended Mechanical, Electrical and Transmission Equipment", filed in the Commission April 3, 1964, as a supplement to the original filing of July 10, 1963.

(iii) all other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-3 (Revised August 1, 1964) entitled, "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States" (32 FPC 1114), which terms and conditions, designated as Articles 1 through 29, are attached and made a part hereof, except Article 25 thereof, and subject to the following special conditions set forth herein as additional articles:

Article 30. The Licensee shall pay to the United States the following annual charge, effective April 1, 1949:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with provisions of its regulations, in effect from time to time. The authorized installed capacity for such purposes is 13,100 horsepower.

Article 31. Licensee shall cooperate with Federal, State and local agencies in the development and maintenance of access areas and roads and such other facilities necessary for full recreational utilization by the public of project lands and waters, consistent with the terms of the license and the operation of the project. At the end of six (6) years from the date of issuance of this license and every sixth year thereafter, Licensee shall advise the Commission by letter of the results of cooperation with such agencies and of further recreation development at the project.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NIAGARA MOHAWK POWER CORPORATION, PROJECT NO. 2330

ORDER AMENDING LICENSE (MAJOR)

(Issued February 25, 1965)

Application was filed on November 12, 1964, under Section 6 of the Federal Power Act (Act) by Niagara Mohawk Power Corporation (Applicant) of Syracuse, New York, for amendment of its license for constructed Project No. 2330, known as the Raquette River Project, located on the Raquette River in St. Lawrence County, New York.

The amendment sought would authorize the construction of a new concrete gravity dam to replace the existing timber crib dam at the Norfolk development of the Raquette River Project. The new dam, estimated to cost $350,000 will be approximately 380 feet long and 22 feet high surmounted by flashboards 0.8 foot high. The elevation at the crest of the new dam and of the reservoir's normal water surface will remain the same as that of the existing timber crib dam, namely, elevations 254.1 feet and 254.9 feet, respectively.

The new dam is necessary because the condition of the existing dam is such that leakage is excessive and considerable maintenance is required. Applicant has advised that the condition of the existing dam is such that it will have to be retired in 1965 because it will have reached the end of its useful life. Applicant plans to begin construction in May or June of 1965 and to complete construction in November, 1965.

The Norfolk development has an installed capacity of 4500 kilowatts and a dependable capacity estimated by Applicant at 4000 kilowatts. With the construction of the new dam and consequent elimination of leakage, Applicant estimates that the average annual energy output will increase from 25,660,000 kwh to 28,420,000 kwh.

A Commission staff study of the design of the new dam shows that the structure is adequately designed and would result in a safe and adequate structure if constructed in accordance with accepted engineering practices. The staff also has determined that the replacement of the existing timber crib dam with a new concrete dam is economically feasible.

The Department of the Army has advised that the plans of the project structures affecting navigation are satisfactory.

The Commission finds:

(1) Public notice of the application has been given. No protests or petitions to intervene have been received.

(2) The following described exhibit filed as part of the application conforms to the Commission's rules and regulations and should be approved as part of the license for the project, and Exhibit L, Sheet 3 (FPC No. 2330–8), now part of the license and which has been superseded, should be eliminated from the license:

Exhibit L	FPC No.	Showing
Sheet 3A	2330–10	Existing Norfolk Development Plan, and Sections Dam, Intake, Surge Tank and Power house.

The Commission orders:

(A) The license for Project No. 2330 is hereby amended, effective as of February 1, 1965, to authorize the construction of a new concrete gravity dam to replace the existing timber crib dam at the Norfolk development and paragraph (B), (ii), 3 of the license is hereby revised to read as follows:

> 3. The Norfolk development consisting of a concrete gravity dam 22 feet high and 380 feet long, a ten acre reservoir, an open flume, a wood stave pipeline, a steel penstock with surge tank and a concrete powerhouse containing a 4500 kw unit.

(B) The license is also amended to include the following additional article:

> *Article 33.* The Licensee shall commence construction of the Norfolk concrete gravity dam within one year of the effective date of this order, shall thereafter in good faith and with due diligence prosecute such construction,

and shall complete construction of the Norfolk dam within two years from effective date of this order.

(C) The exhibit described in finding (2) above as conforming to the Commission's rules and regulations is hereby approved as part of the license for Project No. 2330, and the exhibit described in the same finding as being superseded is hereby eliminated from the license for the project.

(D) This amendment in the manner set out above shall not operate to alter or amend the license in any other respect, and shall not in any way constitute a waiver of any other part, provision or condition of the license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgment of the acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

THE ATLANTIC REFINING COMPANY, DOCKET NO. G-17741

ORDER GRANTING APPLICATION FOR REHEARING AND AMENDING ORDER

(Issued February 26, 1965)

On December 31, 1964, 32 FPC 1554, we issued an order approving a settlement proposal filed in the above proceeding on November 24, 1964, by the Atlantic Refining Company (Atlantic). We previously approved a general rate settlement proposal made by Atlantic in which it had reduced the rate for the sales of natural gas involved in this proceeding from 23.55¢ per Mcf to 17.5¢, but excluded the matters relating to Atlantic's refund obligations. Those matters were the subject of the proposal filed by Atlantic on November 24, 1964.

On January 29, 1965, Atlantic filed its application for rehearing of the order of December 31, 1964, stating that its proposal provided for the termination of its obligation to pay interest on refund amounts on August 1, 1964, rather than the November 1, 1964 date specified in Ordering Paragraph (B) of the order of December 31, 1964. We interpreted Atlantic's proposal as an offer to refund all amounts collected above 17.5¢ for the period April 1, 1961 to August 1, 1964, with simple interest computed on such refund amounts at the rate specified in our orders herein but without a terminal date for payment of such interest. Accordingly, our order of December 31, 1964, accepted the settlement proposal and provided for payment of interest until the first of the month in which the settlement proposal was filed.

However, Atlantic states in its application that its proposal was made with the specific intention that the interest paid on the monies to be refunded should terminate on August 1, 1964, the date when the reduced rate which had previously been approved by us had been placed in effect. Further, Atlantic states that this was the intent of the many interested parties to the settlement, and notes no exception or comment was made by any party to any aspect of the proposal as filed.

In view of the fact that the general rate settlement proposal and the current settlement proposal are interrelated products of months of negotiation, although separately filed, we find that good cause exists to grant Atlantic's application for rehearing and amendment of the order issued herein on December 31, 1964.

The Commission orders:

(A) The application for rehearing filed herein by Atlantic on January 29, 1965, is granted.

(B) The first sentence of Ordering Paragraph (B) of the order issued herein on December 31, 1964, is hereby amended by substituting the word "August" for the word "November".

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CENTRAL NATURAL GAS CO., DOCKET NO. CP65-134

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued February 26, 1965)

On November 10, 1964, Central Natural Gas Co. (Applicant), 201 E. Main Street, Vermillion, South Dakota, filed in Docket No. CP65-134 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Northern Natural Gas Company (Northern) to establish physical connection of its natural gas transmission facilities with the distribution facilities proposed to be constructed by Applicant, and to deliver natural gas to Applicant for distribution and resale to the Sioux Alfalfa Meal Company (Sioux) and the unincorporated Village of Meckling and environs, Clay County, South Dakota (Meckling), all as more fully set forth in the application on file with the Commission.

Applicant proposes to construct and operate a distribution system in Meckling, as well as 2.5 miles of 4-inch lateral line.

Deliveries to Central for redelivery to Sioux are on an interruptible basis and deliveries for distribution in Meckling are on a firm basis.

The estimated initial three year period of annual and peak day requirements are estimated to be:

	1st year	2d year	3d year
Annual (Mcf)	116,662	116,662	228,907
Firm	42	42	42

The estimated total cost to Applicant for construction is $70,124, and will be financed from current funds.

On December 16, 1964, Northern filed an answer to the application stating it does not object to rendering the service requested.

Due notice of the filing of the subject application and opportunity for hearing thereon have been given by publication in the Federal Register on December 3, 1964 (29 F.R. 16226). No protest, petition to intervene or request for hearing has been filed in this proceeding.

The Commission finds:

(1) Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-280 (3 FPC 167).

(2) Applicant, Central Natural Gas Company, a Delaware corporation having its principal place of business in Vermillion, South Dakota, is a corporation

legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Northern to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicant, and to sell and deliver to Applicant the volumes of gas hereinbefore described.

(4) The requirement that Northern serve Applicant, as hereinbefore ordered, will not (a) place an undue burden upon Northern, (b) require Northern to enlarge its transportation facilities, or (c) impair Northern's ability to render adequate service to its existing customers.

(5) Applicant should be prepared to receive natural gas from Northern for distribution in Meckling and environs, South Dakota, within one year from the date of the issuance of this order.

The Commission orders:

(A) Northern be and is hereby directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant, Central Natural Gas Company as herein described, and to sell and deliver up to 42 Mcf per day of firm gas, third year peak day requirements, to Applicant for distribution and resale as hereinbefore described. Such service shall be rendered pursuant to Northern's presently filed appropriate rate schedule.

(B) Northern shall report to the Commission, in writing the date of commencement of service to Applicant within 15 days after such service begins.

(C) Applicant shall be prepared to receive service as directed herein within one year from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

FLORIDA POWER & LIGHT COMPANY, DOCKET NO. E-7210

ORDER INITIATING INVESTIGATION AND HEARING

(Issued February 26, 1965)

By this order we initiate an investigation of the Florida Power & Light Company to determine whether that company is a public utility subject to regulation under the Federal Power Act.

Florida Power & Light Company (FP&L) is a corporation engaged in the generation, transmission and sale at wholesale and retail of electric energy. It is organized under the laws of the State of Florida and maintains its principal business office in Miami, Florida. By letter of October 3, 1963, the staff of this Commission, having concluded from information before it that FP&L was a public utility within the meaning of Section 201 of the Federal Power Act, requested FP&L to make appropriate filings. In response thereto at a conference on February 14, 1964, and by letter dated April 7, 1964, FP&L denied that it is a "public utility" within the meaning of the Federal Power Act. Subsequent conferences between the Commission staff and representatives of FP&L have failed to resolve the questions of fact necessary for a Commission determination of its status.

From information presently available in the files of the Commission, it appears that FP&L owns and operates an electric generating and transmission system in the state of Florida which is interconnected[1] with electric generating and transmission systems owned and operated by Florida Power Corporation, Tampa Electric Company, City of Jacksonville, Florida, and Orlando Utilities Commission. Some or all of these systems operate as the Florida Power Pool, which is electrically interconnected with the Georgia Power Company, Gulf Power Company, Alabama Power Company and Mississippi Power Company, which make up the Southern Pool. Considerable exchanges of power between members of the two pools are taking place in interstate commerce on an increasing scale. It appears that FP&L participates in these exchanges and as a result may be a public utility within the meaning of the Federal Power Act. Since, however, FP&L denies that this is the case, an investigation to determine the facts upon a hearing record is necessary and appropriate.

The Commission finds:

In view of the foregoing circumstances, it is necessary and appropriate for the purposes of carrying out the provisions of the Federal Power Act, and particularly, but not in limitation of the foregoing, sections 201, 208, 301, 307, 308 and 309 (16 U.S.C. §§ 824, 824g, 825, 825f–h) that an investigation and hearing be initiated to determine whether FP&L is a "public utility" within the meaning of, and subject to the requirements of the Federal Power Act.

The Commission orders:

(A) At a time and place and before a hearing examiner to be specified, a public hearing shall be held to find and determine:

(1) Whether FP&L is a "public utility" within the meaning of Section 201 of the Federal Power Act and required to maintain its accounts in accordance with the Commission's Uniform System of Accounts for Public Utilities and Licensees, Part 101 of the Commission's Regulations thereunder;

(2) Whether FP&L maintains its accounts as required by the Commission's Uniform System of Accounts for Public Utilities and Licensees. and if not, what action should be taken by the Commission to insure compliance therewith;

(3) Whether other orders or other actions may be necessary and appropriate to bring about compliance with the Federal Power Act and the Commission's Regulations thereunder.

(B) A prehearing conference shall be held before a presiding examiner commencing at 10 a.m. (EST), April 12, 1965, in a hearing room of the Federal Power Commission, 441 G Street, N.W., Washington, D.C. 20426, for purposes as specified in the Commission's Rules of Practice and Procedure.

(C) In order that the foregoing issues may be properly determined, an investigation is hereby initiated and FP&L is hereby directed pursuant to the provisions of Sections 301(b), 307 and 309 of the Federal Power Act to grant to authorized members of the staff of the Federal Power Commission during regular business hours, free access of its property and access to and the right to inspect and examine all of its accounts, records and memoranda including, but not limited to, the following: books, papers, correspondence, contracts, agreements, maps, reports of engineers, meter readings, and log sheets upon their request; and shall either furnish copies of such material at the request of the staff, or make such material available for reproduction by the staff or shall produce such material for use by the staff prior to and during said hearing at the Offices of the Commission, 441 G Street, N.W., Washington, D.C. 20426.

---

[1] Information obtained from FP&L's annual reports indicate that these interconnections are being strengthened by new transmission facilities presently under construction.

(D) Notices of intervention or petitions to intervene in this proceeding may be filed with the Federal Power Commission, Washington, D.C. 20426, on or before March 23, 1965, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.37).

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP64–96

FINDINGS AND ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 26, 1965)

On April 17, 1964, 31 FPC 957, the Commission issued a certificate of public convenience and necessity in Docket No. CP64–96, to Transcontinental Gas Pipe Line Corporation (Applicant) authorizing the construction and operation of an additional delivery point and other facilities by the Applicant to enable it to better serve Philadelphia Electric Company, an existing customer, with natural gas. The proposed facilities were to be located near the City of Coatesville, Chester County, Pennsylvania, and were to be placed in operation within nine months from the date of the order.

Applicant states that due to intervening circumstances since the date of the said order it has, by letter dated December 15, 1964, been advised by Philadelphia Electric Company that gas deliveries at the place just mentioned will not be required by it until on or about November 1, 1965.

Applicant requests that the time fixed by paragraph (c) of the order issued on April 17, 1964, be changed and extended until November 1, 1965.

The Commission orders:

(A) The date provided for in paragraph (c) of the Commission's order of April 17, 1964, be and the same is hereby changed to November 1, 1965.

(B) In all other respects the order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

MICHIGAN GAS STORAGE COMPANY, DOCKET NO. CP65-86; PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP65-110

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 1, 1965)

On September 30, 1964, Michigan Gas Storage Company (Michigan), filed in Docket No. CP65-86 an application as supplemented on December 2, 1964, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of natural gas facilities, all as more fully set forth in the application.

Michigan proposes to construct and operate (1) approximately 31 miles of 26-inch pipeline, extending from a point of connection with Michigan's Main Line in Gratiot County, Michigan, to a proposed point of interchange (to be known as Saginaw Junction) with the so-called "North Line" of Panhandle Eastern Pipe Line Company (Panhandle) in Saginaw County, Michigan; and (2) a new interchange or delivery point with Panhandle at the eastern end of the proposed 26-inch pipeline, at Saginaw Junction.

On October 26, 1964, Panhandle filed in Docket No. CP65-110 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities, all as more fully set forth in the application.

Panhandle proposes to construct and operate a new interchange with Michigan, which is to be located on Panhandle's North Line, in Saginaw County, Michigan. The application states that the purpose of this interchange is to provide flexibility on Michigan's system.

Michigan's application, as supplemented, states that the proposed facilities are required in order to increase the peak-day deliverability of Michigan's facilities to Consumers Power Company (Consumers) for the Saginaw-Bay City area. Consumers' peak-day capability in the area at present is approximately 171,400; the proposed facilities will enable Consumers to meet anticipated peak-day requirements of approximately 186,000 Mcf during the 1965-1966 heating season, and anticipated peak-day requirements of 284,000 Mcf by 1969-70.

The estimated cost of Michigan's proposed construction is $2,995,000, and will be financed with internally generated funds.

The estimated cost of Panhandle's proposed construction is $6,600, and will be financed with funds on hand.

After due notice, no petition to intervene, notice of intervention, or protest to the granting of the applications has been filed.

At a hearing held on February 25, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications, as supplemented, and exhibits, submitted in support of the authorizations sought, and upon consideration of the record,

The Commission finds:

(1) Michigan Gas Storage Company, a Michigan corporation having its principal place of business in Jackson, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 3, 1946, in Docket No. G–731 (5 FPC 965).

(2) Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G–254 (4 FPC 1081).

(3) The proposed construction and operation of facilities, as hereinbefore described and as more fully described in the applications, as supplemented, and exhibits in these proceedings, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The aforesaid construction and operation of facilities are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(5) Michigan and Panhandle are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(6) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder be conditioned upon the Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) Certificates of public convenience and necessity be and the same are issued to Panhandle and Michigan, authorizing the construction and operation of facilities as more fully described in the applications in these proceedings, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificates issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Michigan's and Panhandle's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

BLANDIN POWER COMPANY, PROJECT NO. 2361

ORDER ISSUING LICENSE (MINOR)

(Issued March 2, 1965)

Application was filed on April 25, 1963 and supplemented on May 24, and June 12 and October 24, 1963, by Blandin Power Company (Applicant) of Grand Rapids, Minnesota, for a license under Section 4(e) of the Federal Power Act

(Act) for constructed minor Project No. 2361 known as the Prairie River Hydro-Electric Project, in the vicinity of Grand Rapids in Itasca County, Minnesota.

The project was originally constructed around 1920. Modifications to the structures were made in 1934, and no major construction or replacement of equipment was accomplished thereafter. No lands of the United States are affected by the project.

Project No. 2361 is located at mile 6.3 on the Prairie River. According to available records, extensive logging activities occurred on the Prairie River commencing about 1872. Such activities were conducted from points upstream from the project to points downstream to the junction of the Prairie with the Mississippi River.

The Secretary of the Army and the Corps of Engineers have reported that the plans of the project structures affecting navigation are satisfactory insofar as the interests of navigation are concerned.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project, certain conditions for the conservation and development of fish and wildlife resources.

The Department of Health, Education, and Welfare has advised that no objectionable pollution conditions attributable to the project have been created or intensified in the past; there is no known discharge of sewage; and the granting of a license for the project is not expected to create or intensify mosquito problems.

In our order on rehearing issued February 17, 1965, in *Wisconsin Power & Light Company, Project No. 2347, et al.*, 33 FPC 275, we stated that we would have no objection to the issuance of licenses for minor projects without waiving Sections 14 and 15 of the Federal Power Act and the other provisions of the Act necessary to the effectuation of those sections, provided the minor applications are timely supplemented pursuant to Section 4.50 of our Regulations under the Act (18 CFR § 4.50), which relates to applications for major projects. In the event the Applicant herein wishes a license in which those provisions of the Act are not waived it should so advise us within 30 days from the date of issuance of this order and file its supplemental application within 30 additional days thereafter.

For the reasons set forth in our Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of April 1, 1962 and a termination date of December 31, 1993.

The Commission finds:

(1) The Prairie River is a navigable waterway of the United States from its mouth to points upstream at least past Project No. 2361.

(2) Applicant is a corporation organized under the laws of the State of Minnesota, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. No protest or petitions to intervene have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for

the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 1,445 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(7) It will be in the public interest to waive pursuant to Section 10(i) of the Act the terms and conditions contained in the following sections of Part I of the Act:

> Section 4(b), except the second sentence thereof; 4(e) insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 14, except insofar as the power of condemnation is reserved; 15; 19; 20; 22; and 23(a) insofar as it relates to the determination of fair value.

The Commission orders:

(A) This license is hereby issued to Blandin Power Company (Licensee) under Sections 4(e) and 10(i) of the Act, for a period effective as of April 1, 1962 and terminating on December 31, 1993, for the continued operation and maintenance of Project No. 2361, located on the Prairie River, a navigable waterway of the United States, subject to the terms and conditions of the Act insofar as not expressly waived herein, which Act is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2361 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined.

(ii) a concrete gravity dam 17 feet high and 946 feet long incorporating a spillway section with tainter gates and two stoplog controlled sluices; and an emergency spillway 269 feet long. The entrance to the forebay is through a canal across which a trash rack is extended. The headworks at the entrance to the flow line consist of a trash rack and manually operated radial gate. A conduit 450 feet long and 10 feet in diameter consisting of reinforced concrete pipe and surge tank leads to a powerhouse constructed of concrete and masonry which contains two Leffel vertical water turbine units rated 1,000 horsepower and 550 horsepower connected to two generators of 700 kw and 384 kw, respectively; and a transformer bank 2.3/23 kv.

(iii) all other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, and all rights and interests, the possession of which is necessary or appropriate in the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-9 (July 1, 1964) entitled "Terms and Conditions of License for Constructed Minor Project Affecting Navigable Waters of the United States" (32 FPC 577), which terms and conditions, designated as Article 1 through 11, are attached hereto, and made a part hereof; and subject to the following special condition set forth herein as an additional article:

Article 12. The Licensee shall pay to the United States the following annual charge; effective as of April 1, 1962.

(i) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, $72.00.

(D) The terms and conditions of the Act, which it has been found above to be in the public interest to waive, are hereby excluded from this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

GEO. A. WHITING PAPER COMPANY, PROJECT NO. 2352

ORDER ISSUING LICENSE (MINOR)

(Issued March 2, 1965)

Application was filed on March 8, 1963, by Geo. A. Whiting Paper Company (Applicant) of Menasha, Wisconsin, for a license under Section 4(e) of the Federal Power Act (Act) for constructed minor Project No. 2352, known as the Menasha Development, located on the Fox River, in the City of Menasha, in Winnebago County, Wisconsin. No lands of the United States are affected by the project.

While the application does not state when the project was constructed, available Commission records show that the project was in existence prior to 1938. Applicant's principal project works consist of generating units (250 hp) and a short canal section (but no dam or reservoir) situated between the Corps of Engineers' Menasha Navigation Canal and the Fox River and takes water from the canal and discharges it into the Fox River. This is in the reach of the river known as the Lower Fox River. In its order dated November 30, 1938,[1] in Docket No. DI-146, City of Kaukauna, Wisconsin, the Commission found, among other things, that the Lower Fox River is a navigable water of the United States.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project certain conditions in the interest of fish and wildlife usually included in licenses for the type of project herein under consideration.

The Department of Health, Education and Welfare has advised that it did not foresee any adverse effects of the project on matters within its responsibility.

The Wisconsin Conservation Department has advised that the project affects navigation, recreation and fish and wildlife interests on the entire Winnebago Pool consisting of Lakes Winnebago, Gutte des Morts and Poygen, as well as the Fox River to the Eureka Lock and the Wolf River nearly to New London.

In our order on rehearing issued February 17, 1965, in *Wisconsin Power & Light Company, Project No. 2347, et al.*, 33 FPC 275, we stated that we would have no objection to the issuance of licenses for minor projects without waiving Sections 14 and 15 of the Federal Power Act and the other provisions of the Act necessary to the effectuation of those sections, provided the minor project

---

[1] Unreported.

The Secretary of the Army and the Corps of Engineers have reported that the plan of the project structures affecting navigation are satisfactory insofar as the interests of navigation are concerned, and recommended for inclusion in any license for the project, certain conditions in the interest of navigation, including a condition that the Riverview Project will not be operated in a manner which would adversely affect accomplishment of the authorized functions of the Corps' upstream multi-purpose West Point project, and (2) a condition that would relieve the United States of the responsibility to compensate Applicant for any damage resulting from construction and operation of the West Point project.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project, certain conditions in the interest of fish and wildlife and in the interest of providing free access to the public, and a provision for Applicant's participation in the maintenance of the gaging station at Bartlett's Ferry. With respect to the latter, such participation is required in Applicant's license for Project No. 485.

Although invited to do so, no reports have been received from the Department of Health, Education, and Welfare, the Game and Fish Department, State of Georgia, and the Alabama Division of Game, Fish and Seafoods.

In our order on rehearing issued February 17, 1965, in *Wisconsin Power & Light Company, Project No. 2347, et al.*, 33 FPC 275, we stated that we would have no objection to the issuance of licenses for minor projects without waiving Sections 14 and 15 of the Federal Power Act and the other provisions of the Act necessary to the effectuation of those sections, provided the minor project applications are timely supplemented pursuant to Section 4.50 of our Regulations under the Act (18 CFR § 4.50), which relates to applications for major projects. In the event the Applicant herein wishes a license in which those provisions of the Act are not waived it should so advise us within 30 days from the date of issuance of this order and file its supplemental application within 30 additional days thereafter.

For the reasons set forth in our Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of March 1, 1959, and a termination date of December 31, 1993.

The Commission finds:

(1) Applicant is a corporation organized under the laws of the State of Georgia, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(2) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(3) The project does not utilize surplus water or water power from a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(4) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(5) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative

annual charge is 640 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(6) It will be in the public interest to waive pursuant to Section 10(i) of the Act the terms and conditions contained in the following sections of Part I of the Act:

> Section 4(b), except the second sentence thereof; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 14, except insofar as the power of condemnation is reserved; 15; 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

The Commission orders:

(A) This license is hereby issued to Georgia Power Company (Licensee) of Atlanta, Georgia, under Sections 4(e) and 10(i) of the Act, for a period effective as of March 1, 1959, and terminating December 31, 1993, for the continued operation and maintenance of Project No. 2350, located on the Chattahoochee River, a navigable water of the United States, subject to the terms and conditions of the Act insofar as not expressly waived herein, which Act is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2350 consists of:

(i) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined;

(ii) A stone masonry diversion dam, 15 feet high and 994 feet long, with a free-flow ogee shape crest (el. 532.3 feet), constructed in 1920; a lower stone masonry dam, 200 feet long with a free-flow crest spillway (el. 530.5 feet), and 200 feet of abutments, constructed in 1906; a concrete and brick powerhouse located at the western end of the lower dam, containing two Leffel type turbines connected to two General Electric generators of 240 kw each, which commenced generation in 1918; and

(iii) All other structures, fixtures, equipment, or facilities which are located in the project area and are used or useful in the maintenance and operation of the project; all rights and interests the possession of which are necessary or appropriate to the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-9 (July 1, 1964) entitled "Terms and Conditions of License for Constructed Minor Project Affecting Navigable Waters of the United States" (32 FPC 577), which terms and conditions, designated as Articles 1 through 11, are attached hereto and made a part hereof; and subject to the following special conditions set forth herein as additional articles:

Article 12. The Licensee shall pay to the United States the following annual charge:

(i) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act for the period March 1, 1959 through March 31, 1962, an annual charge of $5.00, and effective April 1, 1962, an annual charge of $32.00.

Article 13. Whenever the United States shall desire to construct, complete, or improve navigation facilities in connection with the project, the Licensee shall convey to the United States, free of costs, such of its land and its rights-of-way and such right of passage through its dams or other structures, and permit such control of pools as may be required to complete and maintain such navigation facilities.

Article 14. The Licensee shall furnish, free of cost to the United States, power for the operation and maintenance of navigation facilities at the voltage and frequency required by such facilities and at a point adjacent thereto whether said facilities are constructed by the Licensee or by the United States.

Article 15. The operation of any navigation facilities which may be constructed as a part of or in connection with any dam or diversion structure constituting a part of the project works shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including the control of the level of the pool caused by such dam or diversion structure, as may be made from time to time by the Secretary of the Army.

Article 16. The Licensee shall for the protection of navigation, construct, maintain and operate at its own expense such lights and other signals on fixed structures in or over navigable waters of the United States as may be directed by the Secretary of the Department in which the Coast Guard is operating.

Article 17. The Riverview Project No. 2350 shall not be operated in a manner which will adversely affect accomplishment of any authorized function of the West Point Project as determined by the Chief of Engineers, Department of the Army, or his authorized representative.

Article 18. The United States shall not be liable for damages to the licensee resulting from the construction and/or operation of the West Point Project.

(D) The terms and conditions of the Act, which it has been found above to be in the public interest to waive, are hereby excluded from this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NORTHERN VIRGINIA POWER COMPANY, PROJECT NO. 2391

ORDER ISSUING LICENSE (MINOR)

(Issued March 2, 1965)

Application was filed on August 7, 1963 by Northern Virginia Power Company (Applicant) of Winchester, Virginia, for a license under Section 4(e) of the Federal Power Act (Act) for constructed Project No. 2391, known as the Warren Hydro Station, located on the Shenandoah River, in Warren County, Virginia, near the Town of Front Royal.

According to the application, the project was constructed and placed in operation in 1924 and has been in service since that date with no substantial changes. No lands of the United States are affected by the project.

The Department of the Army and the Chief of Engineers have advised that the project structures affecting navigation are considered satisfactory insofar as the interests of navigation are concerned.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project the terms and conditions in the interests of fish and wildlife and recreation usually included in licenses for projects of the type herein under consideration.

The Department of Health, Education, and Welfare, has advised that the project does not affect significantly water supply or water control quality, nor is it expected that the granting of a license for the project will create or intensify vector problems.

In our order on rehearing issued February 17, 1965, in *Wisconsin Power & Light Company, Project No. 2347, et al.*, 33 FPC 275, we stated that we would have no objection to the issuance of licenses for minor projects without waiving Sections 14 and 15 of the Federal Power Act and the other provisions of the Act necessary to the effectuation of those sections, provided the minor project applications are timely supplemented pursuant to Section 4.50 of our Regulations under the Act (18 CFR § 4.50), which relates to applications for major projects. In the event the Applicant herein wishes a license in which those provisions of the Act are not waived it should so advise us within 30 days from the date of issuance of this order and file its supplemental application within 30 additional days thereafter.

In our order issued August 11, 1964[1] we found that the Shenandoah River is navigable from its confluence with the Potomac River (Harpers Ferry) to points upstream from the Millville Hydro Station located at about river mile 6.5. There is ample evidence of historical navigation on the Shenandoah River and its South Fork as far upstream as Port Republic, at river mile 156. This portion of the river was improved for navigation as early as 1807. Flat boats operated from Port Republic down to Harpers Ferry and thence via the Chesapeake and Ohio Canal to Washington, D.C. Project No. 2391 is located on the Shenandoah River at river mile 51.

For the reasons set forth in our Opinion No. 357 (27 FPC 830) the license herein granted shall have an effective date of April 1, 1962 and a termination date of December 31, 1993.

The Commission finds:

(1) The Shenandoah River and its South Fork to at least Port Republic at river mile 156 is a navigable water of the United States.

(2) Applicant is a corporation organized under the laws of the Commonwealth of Virginia, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative an-

---

[1] Potomac Light & Power Company, Project No. 2343 (32 FPC 584).

nual charge is 1,000 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(7) It will be in the public interest to waive pursuant to Section 10(i) of the Act the terms and conditions contained in the following sections of Part I of the Act:

> Section 4(b), except the second sentence thereof; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 14, except insofar as the power of condemnation is reserved; 15; 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

The Commission orders:

(A) This license is hereby issued to Northern Virginia Power Company (Licensee) of Winchester, Virginia, under Sections 4(e) and 10(i) of the Federal Power Act (Act) for a period effective as of April 1, 1962 and terminating December 31, 1993, for the continued operation and maintenance of constructed Warren Hydro Station, Project No. 2391, located on the Shenandoah River, a navigable water of the United States, subject to the terms and conditions of the Act, which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2391 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined; and

(ii) a concrete dam located on the Shenandoah River about 51 miles above the mouth of the river; a headrace about 350 feet long; a powerhouse containing three turbines, each having a capacity of 350 horsepower connected to three generators, each having a capacity of 250 kilowatts; and all other structures, fixtures and equipment or facilities used or useful in the operation and maintenance of the project and located on the project area; and all rights and interests therein, the possession of which is necessary in the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-9 (July 1, 1964), entitled, "Terms and Conditions of License for Constructed Minor Project Affecting Navigable Waters of the United States" (32 FPC 577), which terms and conditions, designated as Article 1 through 11, are attached hereto and made a part hereof, and subject to the following special condition set forth herein as an additional article:

Article 12. The Licensee shall pay to the United States the following annual charge, effective as of April 1, 1962:

(i) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, $50.00.

(D) The terms and conditions of the Act which it has been found above to be in the public interest to waive, are hereby excluded from this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgment of the acceptance of this license amendment, it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

OPINION NO. 451

SOUTHWESTERN PUBLIC SERVICE COMPANY, DOCKET NO. E-7038

OPINION AND ORDER ALLOWING SUSPENDED RATES TO BECOME EFFECTIVE AND FINDING JUST AND REASONABLE WHOLESALE RATES

(Issued March 2, 1965)*

Syllabus

1. Enactment of Rural Electrification Act evidenced Congressional awareness of failure of privately financed electric utilities to provide benefits and advantages of electricity to residents in rural and relatively remote areas. P. 347.
2. An integrated power supply system serving Cooperatives as well as public utility's other customers permits more economical inter-system diversification and lower costs. P. 348.
3. Evidence is persuasive that if Southwestern is not permitted to continue supplying Cooperative's energy requirements at agreed on rates, Cooperatives would construct duplicating facilities with resulting detriment to all customers. P. 348.
4. In determining whether lower rates to Cooperatives are justified, consideration must be given to substantial differences in nature of service rendered by Cooperatives from that provided by investor-owned distributors. P. 348.
5. In light of instant circumstances, Cooperatives have made a strong and persuasive showing for distinctive rate treatment. PP. 349, 350.
6. Southwestern's lower rates to Cooperatives benefit its other wholesale customers by permitting economies on scale not otherwise possible. P. 350.
7. Rates on basis of 3.7 percent return claimed by company is justified by record, being a return in excess of its weighted costs of senior capital. P. 350.
8. In resolving ultimate issue of undue discrimination, it is appropriate to consider whether difference in rate proposed by Southwestern would seriously prejudice competitive business relationships between its investor-owned wholesale customers and Cooperative customers which receive lower rates. P. 350.
9. Physical proximity alone is insufficient evidence of competition. P. 350.
10. Difference between rates Southwestern charges Community [investor-owned purchaser] and those proposed to be charged Cooperatives is insufficient to give latter advantage in area. P. 350.
11. Southwestern's rates to Cooperatives are not unduly preferential or discriminatory; such rates are just and reasonable. P. 351.
12. Commission does not accept Cooperative's contention of entitlement to rates lower than any other group of customers as an "equalizer" because their loads are predominantly rural—such argument has its limits, depending on other relevant factors. P. 351.
13. In finding subject rates just and reasonable, and not unduly discriminatory, Commission is guided by fact that it is fixing rates for future in an industry which has large opportunities for reducing unit costs. P. 351.
14. Use of maximum kwh charges is almost universally limited to situations involving firm sales of power, comprising, generally, entire requirement of customers. P. 352.

---

*Initial decision appears on p. 362. See order on rehearing issued April 26, 1965, 33 FPC 891; modified by Opinion No. 451-A issued September 9, 1965, 34 FPC 841.

15. It would not be useful here to attempt almost impossible task of determining rate of return generally being earned by other business undertakings of comparable risks in same general part of country. P. 353.
16. Determination of fair rate of return is not to be determined by mechanical application of mathematical formula—it requires exercise of Commission's informed judgment on whole of relevant evidence in particular case. P. 354.
17. From investor, company or consumer view, maintenance of good and adequate service requires that utility be afforded opportunity to receive enough in revenues to not only cover operating expenses but also capital cost of business and thus maintain financial integrity. P. 354.
18. There is no precise answer to question of rate of return; rather there is zone of reasonableness within which Commission is free to fix a rate. P. 354.
19. Rate of return of Southwestern's other wholesale customers cannot be considered in isolation from rate of return it has accepted for service to Cooperatives. P. 354.
20. Southwestern is entitled to rate of return of 6 percent upon its investment in wholesale for resale service. P. 355.
21. Consistent with Southwestern's uniform rate schedule practice for Cooperatives, a uniform rate schedule should apply for service to the three investor-owned distributors. P. 356.
22. Commission *finds* just and reasonable wholesale rates and *allows* suspended rates to become effective, in a proceeding under Sections 205 and 206 of the Federal Power Act.

D. H. Culton and *R. W. Richards* for Southwestern Public Service Company.

A. M. Swarthout for Lea County Electric Cooperative, Inc.

Bennett L. Smith for Community Public Service Company.

Phil R. Lucero for New Mexico Public Service Commission.

William C. Wise, Earnest L. Langley, Dale H. Johnson and *William M. Siegenthaler* for The Electric Cooperatives: Bailey County Electric Cooperative, Inc.; Swisher County Electric Cooperative, Inc.; Central Valley Electric Cooperative, Inc.; Tri-County Electric Cooperative, Inc.; South Plains Electric Cooperative, Inc.; Roosevelt County Electric Cooperative, Inc.; Rita Blanca Electric Cooperative, Inc.; North Plains Electric Cooperative, Inc.; North Fork Electric Cooperative, Inc.; Lyntegar Electric Cooperative, Inc.; Lighthouse Electric Cooperative, Inc.; Lamb County Electric Cooperative, Inc.; Greenbelt Electric Cooperative, Inc.; Farmers Electric Cooperative, Inc., of New Mexico; and Deaf Smith County Electric Cooperative, Inc.

Tom Reavley for Texas Electric Cooperatives, Inc.

Drexel D. Journey, Watt N. Martin and *Sandra J. Strebel* for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

Ross, *Commissioner:* This proceeding arises under Sections 205 and 206 of the Federal Power Act and involves the question whether the rates charged by a public utility subject to the jurisdiction of this Commission are just and reasonable and not unduly preferential or discriminatory. The proceeding was initiated by the Commission's order issued May 15, 1962, 27 FPC 959, suspending the operation of certain rate schedules[1] filed by Southwestern Public Service Company (Southwestern), instituting an investigation concerning the lawfulness of all of Southwestern's rate schedules on file and as supplemented and proposed to be changed, and providing for a public hearing to be held concerning the lawfulness of such rates. Thereafter the New Mexico Public Service Commission filed notice of the intent to intervene, and petitions to intervene were filed by Community Public Service Company (Community), Lea County Electric Cooperative, Inc. (Lea County) and, jointly, by fifteen rural electric cooperatives (hereinafter referred to collectively as the Cooperatives) served by Southwestern. A public hearing was held, briefs were filed and oral argument had before the Presiding Examiner who issued his initial decision on September 1, 1964.

---

[1] They became effective on October 19, 1962 subject to the further order of the Commission.

In substance the Presiding Examiner concluded (1) that the rates charged by Southwestern for energy sold to its wholesale customers subject to this Commission's jurisdiction were unjust and unreasonable, and (2) that the differences between the rates charged to its investor-owned customers and those charged consumer-owned cooperatives were unreasonable, and thereby subjected the former to undue prejudice and disadvantage. Briefs have been filed in support of and in opposition to exceptions to those conclusions, and the parties and participants have argued the matter orally to the Commission.

The suspended rate schedules with which we are here concerned have the effect of reducing Southwestern's wholesale rates to all of its consumer-owned rural electric cooperatives except Lea County and Pioneer Cooperative Association, Inc. Prior to the instant filing, the rates to the Cooperatives were lower than those to Southwestern's three investor-owned purchasers,[2] so that the rates here under question widen the gap between the level of rates charged to the fifteen cooperatives on the one hand and the privately financed utilities on the other. Southwestern does not, by means of the proposed revised rate schedules or otherwise, propose any change in the wholesale rates presently charged to the investor-owned customers.

Southwestern is an integrated electric utility company. Its service area covers approximately 45,000 square miles and includes a portion of Morton County, Kansas, the Oklahoma and the Texas Panhandles, the South Plains area of Texas, the Clovis-Portales region of eastern New Mexico, and the Pecos Valley area of that State, namely, Eddy and Chaves Counties. As of December 31, 1962, Southwestern provided electric service at retail to 213,588 customers in 126 cities and towns in Texas, New Mexico, Oklahoma and Kansas. Southwestern also furnished firm service to 18 wholesale customers for resale: the three investor-owned companies already mentioned and 15 rural electric cooperatives. Emergency or supplemental service is rendered to three other distribution customers, two of which, including Lea County, are also consumer-owned.

During the test year 1962, 77.4 percent of Southwestern's sales were made at retail to its domestic commercial and industrial customers, and 22.6 percent were to its wholesale customers. Of the 22.6 percent in the latter classification, 15.8 percent were firm sales to the 15 cooperatives who are intervenors in this proceeding, about 0.4 percent were to Lea County in the nature of standby and supplemental service, about 1.0 percent were sales to Community, about 5.2 percent were to New Mexico Electric and about 0.2 percent were to Cochran.

The generating capability of Southwestern's interconnected system on December 31, 1962, was 971,500 kilowatts from twelve steam-electric generating stations and 6,300 kilowatts from internal combustion engines. Since then, Southwestern has installed a 10,000 kilowatt gas turbine unit and a 200,000 kilowatt steam-electric unit. Another 200,000 kilowatt unit is scheduled for service in the spring of 1965. Southwestern's backbone transmission system presently operates at 115,000 volts but some sections have been constructed for operation at 230.000 volts. At the end of 1962 Southwestern had 4,159 miles of transmission lines of 22,000 volts or more.

---

[2] New Mexico Electric Service Company (New Mexico Electric), Cochran Power and Light Company (Cochran), and Community Public Service Company (Community).

The Cooperatives and the three investor-owned distributing companies are dispersed throughout Southwestern's service area. The area served by North Plains Electric Cooperative, Inc. (North Plains) includes Hansford, Lipscomb, and Ochiltree Counties, Texas in their entirety. Community engages in the distribution of electricity in the cities of Spearman and Perryton, in Hansford and Lipscomb Counties, respectively, and other communities and customers along its lines in Hansford, Lipscomb and Ochiltree County, Texas.

Section 205 of the Federal Power Act requires that we determine (a) whether the rates and charges made and received by Southwestern in connection with the transmission or sale of electric energy subject to our jurisdiction are just and reasonable and (b) whether with respect to any such transmission or sale Southwestern is making or granting any undue preference or advantage to any person or subjecting any person to undue prejudice or disadvantage, or is maintaining any unreasonable difference in rates, or in other respects, either as between localities or as between classes of service. We shall first consider the discrimination question.

The Discrimination Issue

It is uncontroverted that the rate schedules which Southwestern applies to its three investor-owned purchasers of energy for resale are higher than those which it applies to its consumer-owned rural electric customers. It is also conceded by all of the participants in the proceeding that not all differences in rates are prohibited by Section 205, but only those which are unreasonable and which result in undue prejudice or disadvantage, and that differences in rates as between appropriately classified customers are consistent with Section 205 and represent the usual practice in the industry.

Relying upon certain earlier Commission declarations of policy respecting differences in rates, our Staff and Community contend that the differences between the rates which Southwestern charged New Mexico Electric, Cochran, and Community, and those charged the Cooperatives are unreasonable and result in an undue prejudice and disadvantage to Southwestern's investor-owned utility customers. Neither New Mexico Electric nor Cochran have complained to this Commission of such differences and neither participated in the proceeding. Of Southwestern's other wholesale customers, only Community opposes the proposed changes in rates. There may, however, be significance in the fact that New Mexico Electric has informed Southwestern that it intends to install its own generating facilities in the near future. New Mexico has acquired a site and is proceeding toward the construction of such facilities for completion in 1967. It has informed Southwestern that it proposed at that time to terminate its purchases.

The Cooperatives and the Administrator of the Rural Electrification Administration[3] contend that rural electric cooperatives, without regard to location or the particular circumstances under which a given cooperative may operate, are properly placed in a category separate and apart from investor-owned utilities, and thus entitled to a difference and lower rate, without violating the prohibitions of Section 205. Southwestern takes a similar position, maintaining that many other companies engaged in the generation and sale of electric energy for resale have established a different classification of rates for rural electric cooperatives and that many State courts and commissions have recognized the validity of the classification.[4] Southwestern supports its position on the circumstances of its service area in which it claims it could not have offered area coverage to the rural areas on an economical basis. Southwestern believes that it is in the interest of all of its customers to offer wholesale power to the REA co-ops at lower rates to avoid duplicate generation and transmission systems in the area, but at rates which cover cost plus some return on investment.

---

[3] The Administrator, although not a party to the proceeding, was permitted to make a statement of position at the hearing and to file a brief *amicus curiae* on exceptions to the initial decision of the Presiding Examiner.

We agree with Southwestern and Community that the determination of the basic issue in this proceeding must be made in the light of the conditions which now exist in Southwestern's service area, giving particular consideration to the consequences to Southwestern, and its purchasers, and to the ultimate consumers within Southwestern's service area. We shall not, therefore, in this decision undertake to establish a broad rule applicable to every situation but shall, instead, confine ourselves to the circumstances and conditions reflected in the record in this case. However, we disagree with Community to the extent that its view of relevant circumstances is limited to a consideration of the cost of the service by Southwestern to its various customers.

While we reject the Cooperatives' broad conclusion some of their contentions are helpful in resolving the issue before us. In this connection the enactment of the Rural Electrification Act in 1936 evidenced Congressional awareness of the failure of privately financed electric utilities to provide to those residing in sparsely settled rural and relatively remote areas the benefits and advantages of electricity. It was recognized that the high cost of money for construction purposes combined with the heavy investment required for each customer served made it impracticable for rural residents to procure such service without governmental assistance. Some of the privately financed utilities including Southwestern recognized the advantages which would flow from the extension of electric service to rural areas, welcomed the organization of the electric cooperatives within their service area, and cooperated with them to that end by furnishing low-priced power at wholesale.

In Southwestern's service area agriculture is of substantial importance. For many years that area has been highly prosperous, not only in the larger cities and towns, but also in the farming and cotton-raising sections. At the same time this area is sparsely occupied and there are few electric utility customers per mile. Statistics applicable to 14 of the 15 Cooperatives who are intervenors here reveal that they had constructed 31.948 miles of transmission and distribution lines which have an average of only 2.0085 customers per mile and an average investment per customer of $1,112. This results from the Cooperatives' undertaking to provide complete area service. Evidence adduced by Southwestern shows that had that company undertaken to cover the rural areas within, and adjacent to its service area with area coverage, it would have been necessary for it to make investments in facilities which would have resulted in rates to the rural customer substantially higher than those offered by the cooperatives to an extent, in Southwestern's opinion, that they would be costly beyond the value of the service.

---

[4] *Wholesale Rates for Electric Power to Rural Cooperatives Associations* (Kentucky P.S.C., 1937) 19 P.U.R. (N.S.) 22; *Highland Utilities Co.* v. *The Western Colorado Power Co.* (Colorado P.U.C., 1943) 48 P.U.R. (N.S.) 180; *Public Service Company of Indiana* (Indiana P.S.C., 1961) 37 P.U.R. 3d 485; *State of North Carolina* v. *Municipal Corp. of Scotland Neck* (N.C. S. Ct., 1955) 243 N.C. 193, 90 S.E. 2d 519, among others.

The evidence also shows that all of Southwestern's customers have benefitted from the sales to cooperatives, notwithstanding the lower rates. By reason of the inclusion of the power requirement of the rural electric cooperatives in Southwestern's systems load, a larger power supply is made possible which, in turn, results in the use of larger generating units and higher voltage transmission lines and thus lower costs per kilowatt hour of energy. An integrated power supply system serving the Cooperatives as well as Southwestern's other customers, retail and wholesale, also permits more economical inter-system diversification. These are material benefits to the Company and presumably are shared by all of the immediate and ultimate customers of the Company.

The evidence is persuasive that if Southwestern is not permitted to continue to supply the Cooperatives with their energy requirements at the rates which have been agreed upon between them that the co-ops would undertake the construction of generation and transmission facilities with funds borrowed by them from the REA. The resulting duplication of facilities would be detrimental to all of Southwestern's customers.

The Cooperatives are the fastest growing segment of Southwestern's load and the record reveals that its loss to Southwestern would be the eqivalent of losing three years of load growth. The consequence would be an immediate burden of excess capacity and an ultimate burden of the loss of the economies of scale which could cause higher rates to all classes of customers than would be possible if the cooperative load were served by Southwestern's integrated power system.

Furthermore, there are substantial differences in the nature of the service rendered by the Cooperatives from that provided by the investor-owned distributors to which we believe consideration must be given in determining whether lower rates to the Cooperatives are justified in this case. Since Community is the only investor-owned distributor in this proceeding complaining of the differences in rates it is appropriate to compare the conditions under which Community renders service and those surrounding the service by North Plains.

It is clear from the evidence that Community Public Service Company (and its predecessor companies) was, and still is, unwilling to undertake comprehensive area service throughout the rural areas served by North Plains, but restricts its service to areas closely adjacent to its two main transmission lines.[5] Its extension policy, which has been in effect for several years, is that it will not take on a new customer in the more remote areas if the investment is more than five times the estimated gross annual revenues from the potential customer. Community has been under no legal inhibitions so to limit its service to the immediate environs of its transmission lines.

The service area of Community has remained substantially unchanged for several decades. It has purchased its power requirements from Southwestern since 1935. The transmission line from Spearman to Follett along the Sante Fe Railroad was built even earlier and both the railroad and the transmission line passed through seven other small towns. It was not until after the organization of North Plains that Community extended the line to Lipscomb and Higgins.

Spearman and Perryton being incorporated municipalities of more than 1,500 population each, are not open to service by North Plains,[6] and thus Community has the exclusive right to serve electric consumers residing in those municipalities. The other communities and areas are open for service by either or both of them.

---

[5] These lines closely follow the railroad line running northeasterly from Spearman to Follett, Texas, and the other intersecting line running in a southerly direction through Lipscomb to Higgins, Texas.

[6] Rural electric cooperatives are limited by the Rural Electrification Act to service in

When North Plains was organized in 1944, only six farms in the whole area which the Cooperative proposed to serve were receiving electric service. Three of them were located in the immediate environs of Perryton and three were along the railroad some four or five miles from that city. Community now serves about 125 consumers in rural areas but all are within a narrow strip lying within a mile or two of its existing main transmission lines.

In contrast, North Plains and the other cooperatives undertook to provide area coverage which necessitated extentions of service to all farms and other users of electricity in the rural areas of the counties which the Cooperatives were organized to serve. In discharging that obligation, North Plains has constructed 1,860 miles of transmission and distribution lines, and at present there is only one farm in the entire area which is not receiving service, and service is available to it. Even now, however, the customer density of the North Plains service area is slightly less than one per mile, and the investment per customer is $1,780. Community, on the other hand, had 19.59 customers per mile of distribution line, and an average investment in distribution plant of $409 per customer.

Southwestern and the Cooperatives have cited opinions of State courts and commissions holding that factors such as we have discussed justify wholesale service to rural electric cooperatives under a different schedule and at lower rates than those charged to electric utilities serving urban areas with high consumer density.[7] It is the position of the Staff of the Commission and Community that these decisions have no applicability here. In our view, these decisions are helpful to an understanding of the issues involved, but they do not control our determination, which must be based on the record in this case.

Staff and Community rely on our opinions in *Gulf States Utilities Company*, 1 FPC 522, and *Otter Tail Power Company*, 2 FPC 134. But the circumstances surrounding those cases differed significantly from those with which we are here confronted. As the Commission stated in *Wisconsin Michigan Power Company:*

> These early opinions were rendered more than two decades ago, before REA co-ops became major purchasers of power at wholesale. They would, therefore, not be dispositive of the contention that the cooperatives constitute a separate class of customers for rate-making purposes or other related contentions on which a full record is being made in another proceeding * * *.[8]

It is this proceeding to which we referred in the above quotation.

Based upon the record now before us we are of the view that the Cooperatives with which we are here concerned have made a strong and persuasive showing

---

rural areas which includes incorporated towns having a population when service is begun of 1,500 or less, unless the cooperative is the sole supplier of electricity of an incorporated city or town. Under the act the cooperative may continue to serve an incorporated municipality if the municipality increases in population above 1,500, and it may also continue to serve customers it had previously served if located in an area that should become annexed to a city, regardless of the size of the latter. Rural areas are also defined by Texas statute to include cities and towns of 1,500 or more, but by the statutes of New Mexico, incorporated cities and towns of 5,000 population are included.

[7] See footnote 4, *supra*.

[8] *Wisconsin Michigan Power Company,* Docket No. E-7026, Opinion No. 432, issued June 9, 1964, 31 FPC 1445, at p. 1451.

for distinctive treatment in the light of the circumstances of this case. They have set as a goal blanket service throughout the rural areas which they have undertaken to serve and have worked diligently to accomplish that goal. Although they now serve some substantial commercial and industrial loads in addition to their complete domestic and agricultural coverage their customer density remains only a small fraction of that of the investor-owned distributors, and the investment per customer is considerably higher. We further find that Southwestern's lower rates to the Cooperatives benefit Southwestern's other wholesale customers by permitting economies of scale not otherwise possible. Southwestern's attitude is thus consistent with the objectives of the National Power Survey in which we recommended pooling by small systems. In this respect, the Cooperatives are still in a stage of rapid growth and development of their market, and in the course of time their services should become more lucrative both to the Cooperatives and their wholesale supplier.

In addition, we note that the proposed rates to the Cooperatives cover the costs of providing the service and yield a return of some 3.7 percent as computed by the Company or approximately 5.5 percent based on the Cooperatives' cost of service. It is unnecessary to decide the many cost of service issues which account for the difference because we believe the record in this case justifies the rates on the basis of the 3.7 percent return claimed by the Company, a return in excess of the Company's weighted costs of senior capital.

Before reaching any conclusion on the ultimate issue of undue discrimination, we believe it appropriate to consider whether the difference in rates proposed by Southwestern would seriously prejudice the competitive business relationships between its investor-owned wholesale customers and the Cooperative customers which would receive lower rates.[9] Community is the only party claiming that it competes with a cooperative, *i.e.*, North Plains, in selling electricity, and that its higher rate from Southwestern is detrimental respecting its competitive efforts. In this connection, Community contends that it competes for business along the strip immediately adjacent to its main transmission lines, with the exception of the Cities of Spearman and Perryton for which Community has an exclusive franchise.

Community points out that it and North Plains both operate distribution systems in the towns of Twichell and Lipscomb and in the area within two miles of Spearman. North Plains has lines around and close to every town in the area and the lines of these two distributors cross at 37 points and approach each other at 27 other points.

However, physical proximity alone is insufficient evidence of competition. It merely depicts the results of Community's self-imposed service limitations and North Plains' willingness to provide area coverage. Community provides service to two-thirds of the residents of the town of Lipscomb and about 40 farms in that area. It was able to get this business, the evidence shows, because its residential rates are lower than those of North Plains. However, the evidence discloses only three instances in which customers switched supplies: one from North Plains to Community, another from Community to North Plains, and the third involved an exchange. All three cases involved farm customers.

The difference between the rates which Southwestern charges Community and those which it proposes herein to charge the Cooperative is insufficient to give the latter an advantage in this area. In the lower blocks Community's residential rates are already lower than the Cooperatives'. Both have a 2 cents per kwh final step, Community for consumption over 150 kwh, North Plains for over 200 kwh per month.

---

[9] Bonbright, James C., *Principles of Public Utility Rates*, Columbia University Press (1961), p. 384.

Community's principal contention revolves around new industrial and commercial customers in the rural areas and the oil field business in particular.

Community showed that in June 1963, it served a total of 1,415 customers including 386 commercial and one industrial customer outside the cities of Spearman and Perryton within the rural areas as defined by law. They represented about 25 percent of the customers served by Community in Hansford, Ochiltree and Lipscomb Counties. In 1963 Community was also serving five pumping oil wells, one oil field installation and one oil gathering station all near the community of Farnsworth. At the same time North Plains was serving approximately 200 pumping oil wells, 10 pump stations and a large number of other field installations. While Community claims that at least 50 of these oil field installations were within less than one mile from its facilities capable of handling the loads involved, it failed to produce any evidence showing any efforts it made to provide this service.

A total of only three instances of competition in this area were described with any specificity in which both Community and North Plains bid for new commercial and industrial business. In one, 27 oil field units were involved. Twenty-six of these were small, ranging from 15 to 55 horsepower. The evidence shows that Community was interested only in the large load. North Plains bid for the business on an "all or none" basis and was successful.

In another instance two oil plants were involved. Again, Community was anxious to bid on only one of them. North Plains bid on both and obtained the contract. In the third instance bids were invited to serve "one completed oil well and possibly five others", one or all of which were a distance of about a mile from Community's facilities. However, the purchaser would have had to build lines to each of its wells if Community's offer had been accepted. Here again North Plains procured the contract.

Community adduced testimony to the effect that North Plains was able to get the business in these three situations because it offered rates lower than those offered by Community. North Plains' testimony is to the effect that not the rates but its area coverage had been the key to its success. We are persuaded that the latter version is the correct one, and that the difference between the rates which Southwestern proposes to charge the Cooperatives and the just and reasonable rates we are prescribing for its sales to Community will have no serious or substantial adverse effect upon the latter's ability to compete for business in the rural areas outside the cities of Spearman and Perryton.

In the light of the foregoing considerations, we find that Southwestern's rates to the Cooperatives are not unduly preferential or discriminatory. We further find that such rates are just and reasonable. However, we emphasize that the rates we are sustaining are proffered and advocated by the company; they are not being imposed over the company's objection, and we intimate no conclusion as to the result if the situation were otherwise.

This is not to say that the Commission accepts in this case the broad contention of the Cooperatives that they are entitled to rates lower than any other group of customers as an "equalizer" because their loads are predominantly rural. The "equalizer" argument has its limits, depending on other relevant factors.

In reaching our judgment that Southwestern's rates to the Cooperatives do not fall below minimum standards for a just and reasonable rate and are not unduly discriminatory, we are guided by the fact that we are fixing rates for the future in an industry which has large opportunities for reducing unit costs. It is significant that Southwestern is now adding large, efficient generating units to its system and undoubtedly will meet its future growth with even more efficient and economic facilities. There is every reason to believe that in the years ahead these rates to the Cooperative customers will yield a higher return than indicated by the 1962 test year figures. There is also every reason to expect that the Cooperative systems will become stronger as they build up the loads in the broad areas they serve.

Rate to Lea County Electric Cooperative, Inc.

Lea County Electric Cooperative, Inc., as distinguished from the other rural cooperatives in this case, generates the greater part of the energy which it sells, and receives only supplemental energy from Southwestern. Southwestern's maximum obligation to Lea County is 15,000 kw. The contract provides that the billing demand for any of the months in which the demand charge applies shall be the actual demand in that month unless a higher demand is estabilshed during the preceding months of April through September, but not less than 4,000 kw. This provision contrasts with that in the other cooperative contracts, none of which contains either the ratchet or the minimum features.

During 1962 Lea County's maximum demand during the billing demand months was about 7,770 kv. The average billing demand during the six months in which demand charges apply was about 7,000 kw.

If the new cooperative rate REA-1 (including the 7.5 mill maximum charge per kwh) is applied to Lea County's purchases in 1962, the resulting bill would be about $126,400[10] or $14,262 (10%) less than the actual bill of $140,662. If the maximum kwh charge is not applied, the bill under the new rate would be about $140,612 or $50 less than the actual 1962 bill. The indicated 10% reduction in charges to Lea County compares with the 2% over-all reduction proposed by the company for the other cooperatives. This difference comes about almost entirely from the operation of the maximum kwh charge.

Lea County contends that the service is not properly characterized as "standby" because the electric energy is served continuously. It claims that it is entitled to the same rates as the other cooperatives subject only to the differential which has heretofore existed, namely the 4,000 kw minimum with a 100 percent ratchet.

From the record it appears that Lea County has been served for a period of years under a rate which did not contain a maximum kwh charge, but which was applied uniformly to all of the cooperatives. The use of maximum kwh charges is almost universally limited to situations involving firm sales of power, comprising, generally, the entire requirements of the customer. Although the purchase by Lea County at Denver City (115 kv) delivery point is firm, it represents but a small portion of its system requirements and is made at a relatively low load factor of 18.4%. This is not a situation to which a maximum kwh charge is applicable.

The new cooperative rate schedule REA-1 has one favorable feature not included in prior schedules which should be made available to Lea County, the elimination of the fuel adjustment clause. Application of the new rate, even without the maximum kwh charge, will result in lower charges to Lea County than under the present rate schedule.

Accordingly, we conclude that the new rate schedule modified to eliminate the provision for a maximum kwh charge shall apply to Lea County at the Denver City point of delivery, subject to the existing minimum charges. At the Plains

---

[10] The monthly demand and sales amounts used for these computations are the combined data for the Plains and Denver City delivery points. A slightly different bill will result when the rate is applied separately to each.

(12 kv) point of delivery, the new rate schedule shall apply in its unmodified form, that is, with the inclusion of the provision for a ceiling on the charge per kwh.

Cost of Service

a. *Rate of Return*

With respect to the appropriate cost of service for Southwestern's three investor-owned wholesale customers, including of course, Community, the principal issue is the appropriate rate of return.

Southwestern seeks a rate of return on its wholesale electric service falling within a range of from 7½ to 8 percent. Such an overall rate would yield a return on equity capital of from 14.75 to 16.00 percent.[11] The evidence submitted by Southwestern included comparisons with the earnings of 14 utilities operating in the States of Texas, New Mexico and Oklahoma. Included also in Southwestern's evidence on the subject of rate of return was a study of 14 electric utilities located in "other fair value" jurisdictions, namely Alabama, Arizona, Illinois, Indiana, Montana and Pennsylvania. In addition there was included a study of 14 purportedly comparable unregulated commercial and industrial companies.

Southwestern's rate of return witness computed the present cost of Southwestern's long-term debt at 3.58 percent. He estimated the probable average net cost to Southwestern on additional bonds which may be issued over the next few years as 4.75 percent and the weighted average for the present and the future as 3.87 percent. A similar computation led to his conclusion that the cost of preferred stock money would be 4.63 percent. This witness expressed the view that the upward trend in long-term interest rates will continue.

Treating Southwestern's contentions at this point, we are of the opinion that it would not be useful to attempt the almost impossible task of determining the rate of return generally being earned in the same general part of the country on investments in other business undertakings of comparable risks. There is no sound basis for such a comparison in this record. Obviously the evidence of earnings of unregulated enterprises cannot control our decision herein nor can we be guided by earnings of regulated companies where there is no evidence that such earnings are "in line with the proper rate determinations for the various companies as set by regulatory agencies."[12]

Moreover, it is our opinion that the forecast by Southwestern's witness of continued high interest rates on A-rated public utility bonds is highly speculative and we are not prepared to accept it. Our appraisal of a fair return for Southwestern will assume the currently embedded cost of its debt and preferred stock financing, recognizing that Southwestern will have opportunities for effecting reductions in its overall cost of capital to offset any possible increases in the cost of debt.

In its rate of return study, the Staff used a capital structure which included Southwestern's current long term debt and outstanding preferred stock, but

---

[11] Southwestern's capital structure employed in its rate of return study were as follows:

	Ratios used (percent)
Long-Term Debt	56.00
Preferred Stock	11.00
Common Equity	33.00
	100.00

[12] *Wisconsin Michigan Power Company, supra*, p. 1456.

set up in a separate category the amount of income taxes accumulated under both Sections 167 and 168 of the Internal Revenue Code in the amount of $14,781,183.

Following the issuance of the Commission's Opinion No. 417[13] which dictated the elimination of the requirement of a return of 1.5 percent on that portion of the accumulated accrued taxes, which represented accruals for liberalized depreciation, the Staff revised its recommendation with respect to rate of return. As a result of this revision the Staff finally proposed an allowance of a 6 percent rate of return, which would produce a return of 11.3 percent on Southwestern's common equity.

The Cooperatives did not submit testimony on rate of return in their direct case, but did offer evidence on that subject on rebuttal. Employing Southwestern's current capital structure and the current cost of its long term debt and preferred stock money, the Cooperatives proposed a return on the Company's common equity of 9.0 percent. The Cooperatives thus arrived at a return of 5.472 percent which they rounded off at 5.5 percent.

It is axiomatic that the determination of a fair rate of return for utilities subject to our jurisdiction is not to be determined by the mechanical application of a mathematical formula. The determination we must make requires the exercise of our informed judgment on the whole of the relevant evidence in the particular case.

We are well aware that from the investor or company point of view, as well as the interests of the consumer, the maintenance of good and adequate service requires that the utility be afforded an opportunity to receive enough in revenues not only to cover its operating expenses but also the capital costs of the business, and thus maintain its financial integrity.

We are further aware that there is no precise answer to the question of a rate of return but rather that there is a zone of reasonableness within which the Commission is free to fix a rate. We feel free within the ambit of our statutory authority and the standards of due process to make the pragmatic adjustments which are called for in each particular case. (*Cf., F.P.C.*, v. *Natural Gas Pipeline*, 315 U.S. 575, 585–586.) We think this is a case which peculiarly requires such adjustments.

Southwestern, by the establishment of the rates to the Cooperatives here under consideration, has agreed to what we consider the lower limits of a zone of reasonableness. The rate of return to Southwestern's other wholesale customers cannot be considered in isolation from the rate of return which Southwestern has accepted for service to the Cooperatives. We find nothing in this record which we think justifies the utilization in a cost of service computation of a rate higher than 6 percent and yet permit us appropriately to protect the interests of the ultimate consumer receiving service from other wholesale for resale purchasers from Southwestern.

Both Southwestern and the Commission staff have introduced extensive rate of return studies in which the key consideration was computing the appropriate return on common equity. While the Commission must, of course, provide a return that will enable the Company to attract capital and maintain its financial soundness, the Commission in recent cases has considered the overall return as well as the return on equity. In *Wisconsin Michigan Power Company, supra.*, the Commission found that an overall return of 6 percent on its wholesale business which would provide that Company a return of 9.3 percent on equity was just and reasonable. A 6 percent overall return would provide Southwestern with a return on its common equity upwards of 11 percent and more if it chooses to bring a greater percentage of debt into its capital structure.

---

[13] *Alabama-Tennessee Natural Gas Co.*, 31 FPC 208.

Southwestern is a seasoned, well-developed integrated electric utility whose management has demonstrated vision and the awareness of the economic facts of life. It has well-established markets in areas which are enjoying unusual load growth and bright prospects for the future. All of these factors enable the Company to attract capital upon favorable terms, and this is evident in the indicated yield on the market price of the Company's common stock. Under all of the evidence in this record we conclude that Southwestern is entitled to rate of return of 6 percent upon the Company's investment in its wholesale for resale service.

b. *Other Cost of Service Issues*

The other cost of service issues with respect to the rates to the investor-owned customers of Southwestern may be disposed of briefly.

Evidence concerning the Company's cost of service for the test year 1962, showing separately the amount assigned and allocated to the three investor-owned customers, was presented by Southwestern, the Cooperatives, and the Commission's staff.

The Company's presentation, when adjusted to a 6 percent rate of return on a rate base reduced by accumulated deferred income tax amounts resulting from the use of liberalized depreciation including a normal provision for cash working capital, *Alabama-Tennessee Natural Gas Company, supra*, results in a cost of service applicable to the three utilities of $1,568,632, only about $37,000 above the Cooperatives' computed at 5.5 percent rate of return on a much smaller rate base. The Cooperatives, in addition to reducing the rate base by the amount of accumulated deferred taxes arising from liberalized depreciation, also reduced the rate base by the amount of accumulated deferred taxes arising from accelerated amortization. Consistent with our decision in the *Alabama Tennessee* case, we do not in this case reduce the rate base by the amount of the latter deferral. At 6 percent rate of return and a rate base reduced to reflect accumulated deferred taxes arising from liberalized depreciation only, the Cooperatives' cost applicable to the private utilities would be $1,659,470.

The Staff's presentation allocated to the investor-owned utilities a total of $1,628,080 (Examiner's Decision, Appendix E). The Staff utilized a rate of return of 6 percent applied to a rate base reflecting deduction of accumulated deferrals from liberalized depreciation.

In view of these small differences we find it unnecessary in this proceeding to pass upon the many differences in principle between the details of the cost of service cases put in by staff, the Cooperatives, and that put in by Southwestern. We shall therefore utilize the Company's computation of the cost of service issues, without necessarily accepting the underlying theories on which it is based, with the adjustments we have noted. Under the circumstances, the cost of service so determined cannot be said to prejudice the Company or its wholesale customers. Accordingly, we find the just and reasonable cost applicable to service by Southwestern to the three utility customers is $1,568,632. The rates for service to Southwestern's three investor-owned companies shall be reduced to a level to meet such costs of service. Attached as Appendix A is a cost of service computation which reflects our conclusions.

Level of Rates to Investor-Owned Distributors

Apart from the cost of service issues, Southwestern raises the separate question whether it should be permitted to include an added element of return in its rates to the three investor-owned distributors to compensate for the low return on its sales to the Cooperatives. In this connection, Southwestern undertook to show that although it was, and would be, earning some return from the sales to the Cooperatives, it was not, and would not be, earning in excess of its cost of service including a reasonable return on all its wholesale business, considered as a group.

Such an averaging goes beyond what is permissible in ratemaking at least in the circumstances of this case. It is one thing to say that Southwestern may voluntarily make rate concessions which are justified in the public interest to one group of its customers, but it is quite another to say that it may do so at the expense of its other customers. It seems to us that each group of wholesale customers has a right to service at just and reasonable rates and that, ordinarily, the others may not be compelled to bear the burden of such rate concessions.

Rate Schedules

Southwestern utilizes four different rate schedules for computing charges to its three investor-owned utility customers:

New Mexico Electric Service Co.	FPC Electric Rate Schedule No. 14
Community Public Service Company	FPC Electric Rate Schedule No. 17
Cochran Power & Light Co.	
Whiteface	FPC Electric Rate Schedule No. 15
Morton	FPC Electric Rate Schedule No. 34

There is no uniformity in these rate schedules either as to rates or as to rate schedule provisions, such as fuel clause, power factor clause, demand determination or minimum bill. This contrasts with the uniform rate schedule practice established by the Company for its services to the Cooperatives.

To comply with our determination of cost applicable to, and thus revenues which it may receive from, its three investor-owner customers, Southwestern must file appropriate supplements to the four rate schedules which are now on file. We believe that consistent with its uniform rate schedule practice for the Cooperatives, a uniform rate schedule should apply for the service to the three investor-owned distributors. Accordingly, we shall require the Company to file supplements to its four above-mentioned rate schedules which shall be uniform as to rates and applicable rate schedule provisions.

The record itself is bare of suggestions as to the form of rate or the substance of rate schedule provisions that may be appropriate for the three investor-owned customers. However, the existing rate schedules present a basic outline of what may be the form of a proper rate structure. Although the record does not contain the basic billing determinants used to bill the three customers, the data in the record, particularly FPC Form No. 1 for the company, show separately on an annual basis the kwh delivered, the demand charges, energy charges and adjustments for fuel cost and power factor. Detailed data on monthly transactions, which agree with the data in FPC Form No. 1, were furnished by the Company to the Staff and are in the Commission's files in this docket. Thus, adequate data are available in this case to permit the design of a rate structure applicable to service by the Company to its three investor-owned utility customers.

The four rate schedules applicable to the investor-owned utilities are of the demand-energy type. We believe that such rate form is appropriate for the service in question and shall utilize it here.

The provision for determination of the billing demand is essentially the same in all four schedules, except for the provision in Rate Schedule FPC No. 34 (Cochran Power & Light Co., Morton delivery point) that the combined cotton gin demand shall not be included in the amount for the eleven preceding months used for ratchet purposes and the absence of a ratchet provision in Rate Schedule No. 15 (Cochran Power & Light Co., Whiteface delivery point). The record does not disclose the reasons for the modified demand determination provisions in these two rate schedules, and it does not appear from the available data that the modifications are either necessary or warranted. In the rate schedule we prescribe here we shall utilize the billing demand determination provision contained in the rate schedules available to New Mexico Electric Service and to Community. Such a provision, according to the available data, would increase by 609 the 1962 applicable demand units for the Morton delivery point from 20,592 kw to 21,201, and for the Whiteface delivery point by 610, from 4552 to 5162, for Cochran.

The minimum bill provisions of the four rate schedules in question are not uniform. All of them are based on the demand charge for the month, but two of them contain modifying clauses. It appears that a uniform minimum bill providing for a payment based on the billing demand for the month would be fair and proper for the schedule we prescribe herein.

Consistent with the pattern of differences among the schedules available for service to the three investor-owned customers, there are differences in the power factor and fuel cost adjustment clauses.

Data in the record, particularly Southwestern's Exhibit No. 13, page 3, indicate that although the cost of fuel is expected to increase from the 1962 level, it would become stabilized in 1965–66. There is no fuel adjustment clause utilized in the rate schedules for the Cooperatives and, on the other hand, production expenses other than fuel are shown as decreasing, as is the investment per kilowatt in the steam production plant. On the basis of the record, it appears that no fuel adjustment clause need be included in the rate schedule for service to the three investor-owned customers.

Insufficient data are available to permit the inclusion of a specific, uniform power factor adjustment clause in the rate schedule we will prescribe herein. Accordingly, the rate contained in the rate schedule is computed on the basis of no adjustment for the power factor of the buyer. We shall, however, permit Southwestern to propose a power factor adjustment provision at the time it files the rate schedule pursuant to this order.

The proposals for inclusion of a power factor adjustment clause shall be accompanied by fully documented statements of (a) reasons for need of such a provision, (b) cost and operating data supporting the specific adjustment values, (c) computations of any required adjustment of rate levels we prescribe here to return to the company the cost of service applicable to the three investor-owned customers and (d) a tabulation, by months and by each customer, for the year 1962, showing the billing units and the results of the application of such adjusted rate levels to the billing units. The tabulation shall also contain a comparison of monthly charges so computed with similar charges computed under the rates we here prescribe.

Primary service discount provisions are contained in the present rate schedule for Community and the rate schedule available to Cochran for the Morton delivery point. These deliveries are made at 66 kv and 115 kv. Although delivery to New Mexico Electric, the largest sale in question, is made at 115 kv, no such adjustment is provided for it. No adjustment is likewise provided in the rate schedule available to Cochran at Whiteface, the smallest sale in question, where delivery is made at 2.3 kv.

Annual sales to the three utilities at primary voltage involve approximately 263.3 million kwh, while the single delivery at secondary voltage involves only about 1.6 million kwh. Since a single, uniform rate is being ordered by us for the three utilities, no provision for delivery voltage discount or charge is necessary because of the insignificant difference it would effect in the net charges to individual customers when compared with charges without such a provision.[14]

Utilizing the cost of service of $1,568,632 described above and billing units available in the files of the case, the following rates shall apply to sales by the Company to its three investor-owned customers:

Demand Charge:

$1.15 per kw for the first 5,000 kw of monthly billing demand; 0.95 per kw for all additional kw of monthly billing demand.

Energy Charge:

4.1 mills per kwh for all energy delivered during the month.

The billing units utilized in computation of this rate are shown in Appendix B hereto.

The following table compares the charges to the three customers as actually made in 1962 and as computed under the rate schedule we prescribe herein.

Purchaser	Actual charge[1]	Computed charge	Reduction
New Mexico	$1,674,147	$1,254,747	$419,400
Community	358,219	258,921	99,298
Cochran:			
Whiteface	18,210	12,654	5,556
Morton	86,520	58,398	28,122
Total	2,137,096	1,584,720	552,376

[1] Examiner's Decision, Appendix E.

The rate schedule which we prescribe herein is attached as Appendix C to this order. It contains all rates, charges and credits applicable for the service to the three investor-owned customers and supersedes all rates, charges and credits contained in the present contracts and rate schedules. Such rate schedules shall be used by Southwestern for billing the above three customers from and after the effective date of this order.

The Commission further finds that:

(1) Southwestern Public Service Company is a corporation organized and existing under and by virtue of the laws of the State of Texas.

(2) Southwestern owns and operates facilities for the generation of electric energy and an integrated, interconnected, transmission system employed in the transmission and sale, at retail and at wholesale, of electric energy over a large area in northwest Texas and in the adjoining portions of the States of Oklahoma and New Mexico.

(3) Southwestern is a public utility as defined in Section 201(e) of the Federal Power Act.

(4) Southwestern's FPC Rate Schedules Nos. 14 to 49, inclusive, and 52, as supplemented, and the services rendered thereunder, are subject to the jurisdiction of the Federal Power Commission within the contemplation of Section 205 of the Federal Power Act.

(5) The rates and charges made, demanded and received by Southwestern for and in connection with the transmission and sale of electric energy transmitted, sold and delivered by Southwestern under and pursuant to Southwestern's FPC Rate Schedules Nos. 36, 37, 38, 39, 40, as supplemented, 41, 42, 43, 44,

---

[14] Although deliveries to the Cooperatives are made at voltages ranging from 2.4 kv to 115 kv, the same range as for the three investor-owned customers, the rate schedules available to the Cooperatives do not contain a delivery voltage adjustment clause.

45, 46, 47, as supplemented, 48, 49 and 52 are just, reasonable and lawful; and the disparity between such rates and those hereinafter found to be just and reasonable for the services which Southwestern renders to New Mexico Electric, Community and to Cochran pursuant to Southwestern's presently designated FPC Rate Schedules Nos. 14, 17, 15 and 34, as supplemented, respectively, is not unreasonable and does not subject any person to undue prejudice or disadvantage within the meaning of Section 205(b) of the Federal Power Act.

(6) A reasonable rate of return for use in the determination of Southwestern's cost of service for the period adopted as the test year in this proceeding is 6 percent per annum.

(7) Southwestern's cost of service rendered to New Mexico Electric, Community and Cochran under Rate Schedules 14, 15, 17 and 34 arrived at by the application of the rate of return found reasonable in Finding (6) to the rate base employed by Southwestern, reduced however by its liberalized depreciation accruals, and adjusted to include cash working capital, was for the test period, $1,568,632.

(8) The revenues derived from the rates and charges made, demanded and received by Southwestern under its FPC Rate Schedules Nos. 14, 15, 17 and 34, as supplemented, during the test period herein exceeded the cost of the services rendered thereunder as found in Finding (7) by $568,464.

(9) The rates and charges made, demanded and received by Southwestern for and in connection with the services which it renders to New Mexico Electric, Community and Cochran under its FPC Rate Schedules Nos. 14, 17, 15 and 34, as supplemented, respectively, were, during the test period, excessive in the amount of $568,464 and, consequently, were unjust and unreasonable and, therefore, unlawful.

(10) The rates and charges made, demanded and received by Southwestern for and in connection with the service which it renders to Lea County Electric Cooperative, Inc. under Southwestern's FPC Rate Schedules Nos. 16 and 35 are unjust and unreasonable and therefore unlawful.

(11) Southwestern's FPC Rate Schedule No. 16, supplemented by the new Cooperative rate schedules, would be just and reasonable.

(12) Southwestern's FPC Rate Schedule No. 35, supplemented by the proposed new Cooperative rate REA–1, modified to eliminate the maximum kwh charge but retaining its present minimum billing demand of 4000 kw, would be just and reasonable.

(13) Paragraph (B) of the Commission's order issued herein on May 15, 1962, as amended by the order of June 10, 1963, 29 FPC 1149, should be vacated.

The Commission orders that:

(A) The rates and charges made, demanded and received by Southwestern for and in connection with the transportation and sale of electric energy to New Mexico Electric, Community and Cochran under Southwestern's FPC Rate Schedules Nos. 14, 17, 15, and 34, as supplemented, shall be changed to those shown in Appendix C hereto.

(B) Southwestern shall file within 30 days from the date of this order new schedules of rates and charges for the transportation and sale of electric energy to New Mexico Electric, Community and Cochran in accordance with those set out in Appendix C hereto, and, unless the Commission shall otherwise order, such new schedules of rates and charges shall be effective as of the expiration of such 30-day period.

(C) Southwestern shall file within 30 days from the date of this order new schedules of rates and charges for the transportation and sale of electric energy to Lea County in accordance with Findings 11 and 12 set out above, such new rate schedules shall be effective as of the expiration of such 30-day period.

(D) The Commission reserves the right to reject all or any part of such new schedules and in lieu thereof to prescribe any other schedules which will more nearly accomplish the purposes of this order and prescribe such other schedules by its further order herein.

(E) On and after the effective date of the new schedules of rates and charges filed or ordered in accordance with Paragraphs (B) and (C) above Southwestern shall cease and desist from making, demanding or receiving any other rates and charges.

Appendix A

SOUTHWESTERN PUBLIC SERVICE COMPANY

Cost of service allocated to investor-owned utility customers

(Based on Company's Exhibit No. 12)

Rate base-averaged (includes M & S)	$6,659,684
Liberalized Depreciation Accrual	(66,767)
Net cash working capital	15,173
Rate Base	6,608,090
Operating and maintenance expenses	794,383
Depreciation and amortization expense	183,705
Taxes—other than income taxes	83,082
Income taxes—State	2,103
Income taxes—Federal	108,874
Return at 6 percent	396,485
Cost of Service	1,568,632

Appendix B

SOUTHWESTERN PUBLIC SERVICE COMPANY

Billing Quantities for Sale to New Mexico Electric Service Company in 1962

Month	Demand-kw		Energy kwh
	Actual	Billing	
January	29,520	[1] 29,504	18,182,790
February	28,172	28,172	15,435,990
March	29,432	29,432	17,045,190
April	30,080	30,080	17,825,580
May	33,572	33,572	19,503,990
June	29,288	29,288	15,309,990
July	30,448	30,448	17,955,990
August	36,668	36,668	20,898,000
September	34,292	34,292	19,024,380
October	32,240	32,240	17,883,990
November	31,376	31,376	17,801,190
December	32,600	32,600	18,732,780
Total	------------	337,672	215,599,860

[1] No information available to explain a billing demand lower than the actual demand.

SOUTHWESTERN PUBLIC SERVICE COMPANY

Billing quantities for sales to Community Public Service Company in 1962

Month	Demand-kw		Energy kwh
	Actual	Billing	
January	6, 720	6, 720	3, 136, 000
February	6, 790	6, 790	3, 192, 000
March	6, 230	6, 230	2, 723, 000
April	6, 090	6, 090	2, 898, 000
May	7, 840	7, 840	3, 091, 165
June	7, 490	7, 490	3, 212, 000
July	9, 030	9, 030	3, 899, 000
August	8, 960	8, 960	4, 060, 000
September	9, 310	9, 310	3, 686, 095
October	6, 650	6, 650	2, 947, 000
November	7, 070	7, 070	3, 325, 000
December	7, 560	7, 560	3, 262, 000
Total		89, 740	39, 431, 260

APPENDIX B

SOUTHWESTERN PUBLIC SERVICE COMPANY

Billing quantities for sales to Cochran Power and Light Company in 1962, Morton Delivery Point

Month	Demand-kw		Energy kwh
	Actual	Billing	
January	2, 040	2, 040	739, 200
February	1, 128	[1] 1, 339	460, 800
March	1, 080	[1] 1, 330	499, 200
April	1, 200	[1] 1, 339	518, 400
May	1, 368	1, 368	564, 000
June	1, 488	1, 488	652, 800
July	1, 464	1, 464	662, 400
August	1, 584	1, 584	676, 800
September	1, 536	1, 536	633, 600
October	1, 824	1, 824	520, 800
November	2, 904	2, 904	1, 125, 600
December	2, 976	2, 976	1, 243, 200
Total		21, 201	8, 296, 800

[1] 60% of November 1961 actual demand.

SOUTHWESTERN PUBLIC SERVICE COMPANY

Billing quantities for sales to Cochran Power and Light Company in 1962, Whiteface Delivery Point

Month	Demand-kw		Energy kwh
	Actual	Billing	
January	570	570	150, 600
February	272	*360	100, 650
March	245	*360	107, 400
April	245	*360	102, 000
May	294	*360	107, 850
June	276	*360	110, 700
July	293	*360	121, 650
August	285	*360	122, 850
September	429	429	123, 000
October	480	480	113, 250
November	528	528	219, 450
December	635	635	259, 200
Total		5, 162	1, 638, 600

APPENDIX C

SOUTHWESTERN PUBLIC SERVICE COMPANY

Rate Schedule No. ——

Electric Power Service to Privately Owned Electric Utilities

1. *Availability*

Available in the territory in which Company operates, to privately-owned electric utilities (Customers) for resale and distribution to those consumers or customers which such Customers serve. Service under this rate schedule is subject to the terms and conditions specified in the contract for electric service in effect between the parties as of the effective date of this rate schedule, provided that the specific provisions of this schedule supersede all similar provisions, if any, contained in such contracts or any present attachments or exhibits thereto.

2. *Character of Service*

Service under this rate schedule shall be firm, and shall be 3 phase, 60 cycle electric energy.

3. *Monthly Rate*

Demand charge:
$1.15 per KW for the first 5,000 KW of monthly billing demand.
$0.95 per KW for all additional KW of monthly billing demand.
Energy charge:
4.1 mills per kwh for all energy delivered during the month.

4. *Measurement of Demand*

The kw of demand shall be determined for the 30-minute period of Customer's greatest use during the month.

5. *Billing Demand*

The billing demand shall be the kw demand for the month, but not less than 60% of the highest demand established in the preceding 11 months.

6. *Power Factor Adjustment*

None.

7. *Fuel Cost Adjustment*

None.

8. *Minimum Bill*

The charge for the billing demand for the month.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON THE LAWFULNESS OF CERTAIN ELECTRIC RATE SCHEDULES FILED BY THE SOUTHWESTERN PUBLIC SERVICE COMPANY FOR RENDERING WHOLESALE SERVICE TO INVESTOR-OWNED CUSTOMERS AND TO COOPERATIVES PURSUANT TO SECTION 205 OF THE FEDERAL POWER ACT

(Issued September 1, 1964)

SHRIVER, *Presiding Examiner:* This is a proceeding to determine the lawfulness of certain wholesale electric rates of the Southwestern Public Service Company pursuant to Sections 205 and 206 of the Federal Power Act. It involves alleged undue preferential power rates. The proceeding was initiated by an order of the Commission dated May 15, 1962, 27 FPC 959, which directed that a public hearing be held, that pending such hearing and decision by the Commission 12 rate schedules which had been proffered for filing by Southwestern on March 28, 1962 be suspended, and that Southwestern on or before July 16, 1962 (later extended), file cost and revenue data showing its costs in rendering service to each of its wholesale for resale customers. The Commission's order was brought on by the fact that Southwestern had negotiated reduced rates with 12 of its rural electric cooperative customers, some of which compete with its other customers, investor-owned utility companies. The Commission's order required, among other things, that Southwestern file revenue and cost data "calculated in accordance with applicable Commission rulings." Under existing rate schedules previously on file with the Commission, Southwestern had been furnishing wholesale electric service to 3 investor-owned utility companies and to 17 rural electric cooperatives.[1]

On August 16, 1962, the Commission granted leave to intervene to the New Mexico Public Service Commission, and to the Community Public Service Company, an investor-owned utility company.[2] On the same date leave to intervene was also granted to the Lea County Electric Cooperative, Inc., of Lovington, New Mexico, and to 15 of the 17 rural electric cooperatives located in Texas, New Mexico and Oklahoma.[3] On May 22, 1963, leave to intervene was granted to Texas Electric Cooperatives, Inc., an association of rural electric cooperatives.

Hearings were held in Washington, D.C., on December 3, 4, 5, 6, 9, 10, 11, 12, 13 and December 16, 17, 18, 1963, at which time testimony and evidence was taken in the case. Twenty-seven witnesses were heard and more than a hundred exhibits were introduced in evidence. An oral argument was held before the Presiding Examiner on May 5, 1964.

The Southwestern Public Service Company is a New Mexico corporation. It came into being, somewhat as it exists today, in 1942. Except for the water system owned and located in Clovis, New Mexico, it is a wholly integrated operating company engaged in the generation, transportation, distribution and sale of electric energy. As of December 31, 1962 (the test year for this proceeding being 1962), it had a service area of approximately 45,000 square miles comprising a portion of Morton County, Kansas, the Oklahoma and Texas Panhandle regions, the South Plains area of Texas, the Clovis-Portales region of eastern New Mexico, and the Pecos Valley area of Eddy and Clovis Counties, New Mexico. Its electric transmission facilities interconnect with those of the west Texas Utilities Company (66 kv at Shamrock), the Texas Electric Service Company

---

[1] Southwestern's investor-owned utility customers, and rural cooperative customers with respective schedules by numbers are listed in Appendix A hereto.

[2] Southwestern's two other investor-owned utility customers, New Mexico Electric Service Company and Cochran Power and Lighting Company, did not petition to intervene.

[3] The names of these cooperatives are as follows:

Bailey County Electric Cooperative, Inc., Muleshoe, Texas, *et al.*; Swisher County Electric Cooperative, Inc., Tulia, Texas; Central Valley Electric Cooperative, Inc., Artesia, New Mexico; Tri-County Electric Cooperative, Inc., Hooker, Oklahoma; South Plains Electric Cooperative, Inc., Lubbock, Texas; Roosevelt County Electric Cooperative, Inc., Portales, New Mexico; Rita Blanca Electric Cooperative, Inc., Dalhart, Texas; North Plains Electric Cooperative, Inc., Perryton, Texas; North Fork Electric Cooperative, Inc., Sayre, Oklahoma; Lyntegar Electric Cooperative, Inc., Tahoka, Texas; Lighthouse Electric Cooperative, Inc., Floydada, Texas; Lamb County Electric Cooperative, Inc., Littlefield, Texas; Greenbelt Electric Cooperative, Inc., Wellington, Texas; Farmers Electric Cooperative, Inc. of New Mexico, Clovis, New Mexico; and Deaf Smith County Electric Cooperative, Inc., Hereford, Texas.

The Pioneer Cooperative Association, Inc. of Ulysses, Kansas, another cooperative customer of Southwestern, did not purchase electric energy from Southwestern in 1962 and did not intervene in these proceedings.

(13.5 kv at Denver City, Texas) and by way of emergency connection with the Pioneer Cooperatives Association (at north Elkhart, Kansas).

Southwestern as of December 31, 1962, had a generating capacity of 971,500 kw in 12 steam-electric generating stations and 6,300 kw in internal combustion engines. In the same year, at the output of power supply, Southwestern's system peak demand was 848,845 kw, and the sum of the maximum noncoincident demands on its system was 1,088,400 kw. Since 1962, it has installed a 10,000 kw gas turbine and has an additional 400,000 kw of generating capacity under construction. A new 200,000 kw generating unit now under construction is scheduled to be placed in service in the spring of 1964, and another in the spring of 1965. Its current load growth is about 70,000 kw annually. By the end of 1962, it provided service to 213,588 customers.

The backbone of Southwestern's transmission system operates at 115,000 volts, but major sections of its system have been constructed for operation at 230,000 volts. By the end of 1962, Southwestern had 4,159 circuit miles of 22,000 volts or higher lines. It also has a series of 66 kv, 44 kv, 33 kv, and 22 kv transmission lines.

The major portion of Southwestern's business is retail in character. In the aforementioned service area, it makes sales at retail in 126 cities and towns in Texas, New Mexico, Oklahoma and Kansas. As to these sales 105 are in cities and towns in Texas (including Amarillo, Lubbock, Plainview, Hereford, Post and other cities, towns and villages); 12 are in New Mexico (including Clovis, Artesia, Roswell and Carlsbad); 8 in Oklahoma (including Beaver, Boise City and Guymon); and 1 is in a municipality in Kansas, namely, Elkhart.

Its retail customers include oil companies, carbon black plants, potash mines, cotton gins, and grain elevators. For the year 1962, Southwestern's total electric revenues amounted to $60,824,794. Southwestern's sales of electric energy in 1962 totalled 4,165,860,508 kwh. Approximately 77.41 percent of Southwestern's sales of electric energy in 1962 consisted of direct sales or retail business. The balance of its electric energy of approximately 22.59 percent was sold for resale as follows:

(1) Approximately 15.83 percent to 15 rural electric cooperatives listed above (Footnote 3) which purchased their entire resale requirements from Southwestern;

(2) Approximately 0.40 percent to the Lea County Electric Cooperative, Inc., representing stand-by service (Lea County having its own generating plant);

(3) Approximately 0.95 percent to the Community Public Service Company, a private utility, for distribution in Hansford, Lipscomb and Ochiltree Counties;

(4) Approximately 5.17 percent to New Mexico Electric Service Company for distribution in Lea County, New Mexico; and

(5) About 0.24 percent to Cochran Power and Lighting Company for distribution in Morton and Whiteface, Texas.

The three latter companies, namely, Community, New Mexico Electric and Cochran Power are private utility companies. As indicated above, New Mexico Electric and Cochran Power have not intervened in the present proceeding. It should also be observed that Southwestern's direct sales (77.41 percent) are not made in interstate commerce and are outside the Commission's regulatory jurisdiction. Southwestern's direct sales, however, are subject to regulation by the states and municipalities where such sales are made. It is the sales to the private utilities and to the cooperatives which are directly involved in this proceeding.

During the spring of 1962, Southwestern negotiated a new rate schedule with 12 of its cooperative customers and with 3 others of later date, reducing their rates. These cooperatives purchase all their required energy from Southwestern. By the terms of the new schedule, the over-all cost of the energy purchased would be reduced a little more than 2 percent below what was payable under the preexisting schedules. Twelve of the cooperatives initially executed contracts accepting the revised schedules and Southwestern proffered the revised schedules to the Commission for filing on March 28, 1962. Thereafter, or during the pendency of this hearing, new schedules for the three cooperatives, North Plains, Rita Blanca and Tri-County Electric were proffered and have been accepted by the Commission for filing.

The Community Public Service Company is incorporated in the State of Texas, and maintains its principal offices in Fort Worth. As contrasted with Southwestern, Community serves five noncontiguous areas, four in widely separated regions of Texas and one in New Mexico. As of December 31, 1962, Community served approximately 91,160 customers, and an estimated population of 266,000 persons.

In 1962, it purchased 1,321,780,547 kwh and generated 94,757,035 kwh, or less than 7 percent of its needs. Community's total electric operating revenue for the year 1962, was $20,874,241. One of the five areas of Community's operations is located on the northern border of Texas, in the Panhandle, and includes the Counties of Hansford, Ochiltree and Lipscomb. All the electricity needed for Community's customers in these counties is purchased by it from Southwestern. In this area, Community is in competition primarily with the North Plains Electric Cooperative.

Community receives delivery from Southwestern at 69 kv off the same bus as the cooperative, North Plains Electric at Spearman, Texas. Community also receives service at 115 kv at delivery point No. 2, north of Perrytown, Texas. New Mexico Electric, a private utility which receives most of its energy needs from Southwestern, receives service at three 115 kv delivery points. Cochran, another private utility, receives all its energy requirements from Southwestern at 66 kv and 2.3 kv connections, respectively, at Morton and Whiteface, Texas.

The 15 rural electric cooperatives (hereafter referred to as Cooperatives) operate in New Mexico, Oklahoma, and Texas. They are located in the general service area of Southwestern and render service primarily to the farm and nonfarm customers in Southwestern's geographical region.

Each cooperative is incorporated under state law, is nonprofit, and is member-owned and controlled. Each member has one vote in management. The existence of the cooperatives was made possible by the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*) which authorized the Administrator of the REA to make loans "for rural electrification and the furnishing of electric energy to persons in rural areas who are not receiving central station service." A rural area has been defined as any area not included within the boundary of any city, village or borough having a population in excess of 1500 inhabitants and includes both farm and nonfarm population, and a person is deemed to mean any natural person, firm, corporation or association (Act of May 20, 1936 c. 432, 49 Stat. 1367; 7 U.S.C. 913). Under the REA Act the cooperatives have borrowed money for the construction of lines and facilities at 2 percent interest repayable within 35 years. Since they are nonprofit in character, cooperatives pay no federal or state income taxes. Although each member may be said to have an equity in the cooperative so long as service is received, no dividends are paid. After the payout each member may look to reduced rates. There is no requirement that the earnings of the cooperative be sufficient to cover a return on borrowed capital; the earnings must be enough merely for maintenance and operation and liquidation of the loan.

With the exception of the cooperatives, Lea County, Central Valley, and Pioneer, all the other cooperatives are as previously mentioned all requirements customers and receive service from Southwestern at a large number of delivery points. Fourteen cooperatives receive service at 66 kv at 75 delivery points, and eight are served from Southwestern's sub-transmission network (44 kv—33 kv—22 kv) at 20 points. There are also some minor deliveries to the cooperatives by Southwestern at lower voltages at several points. North Plains, in addition to the Spearman delivery receives service at Alhambra (metered at 240 volts) Sub-station, Texas, and at Briscoe, Texas (metered at 7.62—13.2 kv). Central Valley is served at 115 kv at Southwestern's Eddy County Switching station in New Mexico. It also receives service at 10 additional delivery points in New Mexico at voltages ranging from 12.47 to 66 kv. Lea County relies upon its own generation for more than 85 percent of its electric requirements and has a power purchase agreement with Southwestern for 15,000 kw stand-by capacity for delivery at 115 kv at Denver City, Texas.

The existing rates, prior to the new filings, under which Southwestern served its cooperative customers were lower than those under which it served its investor-owned utility customers.

Jurisdiction and Classification. Since Southwestern generates electrical energy and sells it at wholesale for resale, it is subject to the jurisdiction of the Federal Power Commission. (Section 201). Section 205 of the Act provides among other things that all rates and charges of a public utility subject to the Commission's jurisdiction shall be just and reasonable, otherwise such rate or charge is declared to be unlawful. Subsection (b) of Section 205, and Section 206(a) provide that:

> 205(b) No public utility shall, with respect to any transmission or sale subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.
>
> 206(a) Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that any rate, charge, or classification, demanded, observed, charged, or collected by any public utility for any transmission or sale subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order.

The principal issue in this proceeding is whether the private utility customers and the rural electric cooperative customers of Southwestern belong to the same class so that in the sale of energy to these customers, Southwestern is required by the terms of Section 205 to furnish such energy to each group of customers at the same or substantially the same rate.

There is no contention in the case that Southwestern's rates to the private utilities and to the cooperatives are the same. Fifteen of the cooperatives, however, are served at the same rate. Lea County receives limited and stand-by service and is served at a different rate than the other cooperatives but each of the 3 private utilities are served at a different and higher rate than that charged the 15 cooperatives. The cooperatives pay a demand charge six months out of the year, the utility companies pay a demand charge for twelve months. The cooperatives are not charged for any fuel adjustment and their new contracts contain a ceiling price provision of 7½ mills per kwh per annum. The utility companies have no such ceiling in their rate schedules.

Southwestern serves both Community and North Plains and the rate of the former is admittedly higher.[4]

Southwestern says that the cooperatives constitute a distinct class, that generally they purchase electric energy for resale to rural areas, whereas the energy purchased by the private utilities for resale is for distribution to urban areas, and that even though the rates charged the cooperatives are lower the difference does not constitute an undue or unreasonable discrimination or preference. Although it is true that the electric energy purchased by the cooperatives is for resale to rural areas, they do not sell in such areas to the exclusion of the urban, nor is it a fact that the private utilities sell only in urban areas. Community and New Mexico Electric in particular sell in rural areas. In recent years some of the cooperatives have acquired loads that formerly were to be found only in or near urban centers. Accordingly, the cooperatives do not constitute a distinct class based alone on the fact that they purchase electric energy for resale in rural rather than urban areas.

Southwestern argues that the cooperatives constitute a separate class because singly or together they can themselves generate and transmit energy to themselves and other cooperatives and in so doing have the same subsidies as in the construction of their distribution lines. This is tantamount to saying that the cooperatives fall in a separate classification because they temporarily possess the economic power to gain an advantage in rates. The fallacy in this argument is apparent. Of course it may be said that Southwestern would not agree to sell energy to the cooperatives at less than cost, but if this argument is carried to its logical extreme it might do so, provided it could realize an over-all profit from its retail customers and other wholesale customers. Thus, although the threat to provide their own generation is a legitimate business bargaining device, it is not a legitimate basis for a class distinction.

The fundamental basis for any difference in classification is a difference in cost or variation of service. Customarily, extreme variations in quantity, customer location, density of customers, and wide range in load factor justify a different classification. But these distinctions have more force in respect to retail than to

---

[4] See the following table:

North Plains, F.P.C. Schedule No. 49	*Community, F.P.C. Schedule No. 17*
Demand Charge $1.725 per kw demand per month, including 100 kw for each kw of demand. [Demand charge does not apply during months of Jan., Feb., Mar., Oct., Nov., and Dec.]	*Demand Charge* $370 for first 200 kw, or less, of demand per month; $1.25 per kw for the next 1,800 kw of demand per month; $1.15 per kw for all additional kw of demand per month.
Energy Charge 5 mills per kwh for all kwh per month in excess of 100 kwh per kw of demand. [During the months of Jan., Feb., Mar., Oct., Nov., Dec., the 5 mills per kwh charge shall apply to all energy used during such month.] *Note:* North Plains has option of being billed at 4.6 mills per kwh subject to fuel adjustment based on heat rate of 15,000 Btu per kwh. Maximum Annual Bill 7.5 mills per kwh.	*Energy Charge* 7.5 mills per kwh for first 200 kwh used per month per kw of demand, or the first 80,000 kwh used per month whichever is greater; 5.0 mills per kwh for all additional kwh used per month. Energy charges subject to fuel adjustment based on a heat rate of 20,000 Btu per kwh.

wholesale rates. The primary considerations in classification in respect to wholesale rates is the quality of service, type, and cost of the service rendered.

Both the cooperatives and the private utilities receive service from Southwestern at voltages ranging from 115 kv to 2.3 kv. Some of the cooperatives and private untilities take deliveries directly from the power supply; other cooperatives and private utilities take delivery from the 66 kv or sub-transmission network. Three-phase service is made available by Southwestern both to the cooperatives and to the private utilities at convenient points where the service is required. Southwestern's customers whether they be cooperative or private companies buy energy in bulk and own their operating facilities for selling and distributing energy to their respective customers. To be sure there are some differences among the cooperatives and the private utilities as to load factor and the quantity of energy purchased. These differences under the circumstances in this case are insufficient to support a separate classification.

None of Southwestern's customers are alike in all respects, particularly the private utilities as contrasted with the cooperatives. But they are not so unlike from the standpoint of service received from Southwestern as to justify a separate classification for rate making purposes. The existing rates under which Southwestern supplies energy to the cooperatives result largely from the fact that the cooperatives bargain as a unit to secure lower rates. Accordingly, it is of significance that Southwestern's President testified on rebuttal that strict adherence to cost as the sole consideration in wholesale rate making might result in one rate level for all wholesale purchasers. If service is to be rendered pursuant to contract some bargaining is inevitable, but to establish rates primarily by the bargaining process necessarily leads to discrimination which in the past gave rise to administrative agencies and Government regulation. *Otter Tail Power Company*, 2 FPC 134, 142 (1940).

The Cooperatives urge that they are entitled to a special rate classification by virtue of the fact that they are set up under the REA Act and are nonprofit organizations. Counsel for the Cooperatives contend at length that the social and economic conditions which led to the enactment of the REA set the cooperatives apart thereby enabling them to bargain for the lowest possible wholesale rates dehors discrimination. It cannot be denied that a cooperative has but little in common with a profit making corporation, but this is not to say that the cooperatives here fall in a separate classification when dealing with a public utility subject to the provisions of Sections 205 and 206 of the Federal Power Act, and when such classification would result in injury and undue discrimination in respect to one wholesale customer as opposed to another. It could hardly be contended, for example, in this proceeding that the cooperatives should be free to bargain for as low rates as possible if, for example, 10 percent of Southwestern's sales were retail, 60 percent were made to investor-owned companies, and 30 percent to the cooperatives. The result in such a situation might well be that the customers of the investor-owned companies would be required to pay for a large portion of the energy furnished to the consumers of the cooperatives. A mere difference in corporate form does not justify a separate classification for the cooperatives for comparable service.

The Cooperatives further urge that since they must construct, maintain and operate many miles of lines through sparsely settled rural areas with consequent line losses and other increased costs, they represent a distinct special classification of wholesale customers. It is also argued that the legislative policies of the Federal and state governments support a special classification. As to the latter, there is nothing in the REA Act which clearly manifests this contention. As to the former contention, it is merely an acknowledgment of the character of the cooperatives to say that they must construct, maintain, and operate in sparsely settled rural areas. But it must also be acknowledged that they are no longer wholly confined to such operations.

No one can doubt that electric power would have been made available to rural areas without legislative assistance or that there were numerous economic and social factors considered by Congress in enacting the REA Statute. Although it is not a matter for appropriate consideration in this proceeding, it should not be forgotten that many of the factors now pressed by the cooperatives were taken into account by Congress and they resulted in the low interest rates, tax advantages and other benefits contained in the REA Act. Congress did not see fit, however, in enacting that Statute to make any reference to the Federal Power Act or to make provision for the classification of the cooperatives under it.

In a brief or Statement of Position of the Administrator, Rural Electrification Administration, filed at the hearing, the Administrator indicated that during the fiscal year 1962 the REA financed systems purchased 13 billion kw hours of electric energy from utility companies at a cost of $100,000,000; that power costs of REA financed distribution cooperatives which served almost 5 million customers in 1962 represent more than 44 percent of their operating costs, and that the ability of these cooperatives to continue to provide abundant supplies of electricity in rural areas at reasonable rates depends in large measure on their ability to keep their costs of power at the lowest possible level. Although the Table of Contents of this Statement is headed, "Why Cooperatives are Entitled to a Separate Wholesale Electric Rate Classification," much of the Statement is devoted to the progress and problems of the REA cooperatives, the social benefits of rural electrification, the efforts of the cooperatives to secure wholesale rates, and the results achieved in negotiating reduced rates. The Federal Power Act provides that "No public utility shall . . . grant any undue preference . . . or maintain any unreasonable difference in rates either as between localities or as between classes of service, etc." The Administrator's Statement, however, makes no reference to the Federal Power Act or its applicability to utilities serving cooperatives.

The issues confronting the cooperatives in the proceedings before the state commissions in obtaining power and in securing wholesale rates are unlike those in the present case, and the many cases cited by the Cooperatives as well as Southwestern are not decisive here. This is not to say that cooperatives generally must always fall in the same class as other wholesalers for resale, but in the present case they are not so unlike Southwestern's other customers as to service received and comparability as to justify a separate classification. In the instant case the cooperatives are served by Southwestern at the same wholesale rate and they in turn serve not merely the farm and rural demands but industrial and other retail customers similar to those served by the private utility companies. Based on the record and evidence it is concluded that there is no sufficient factual or legal basis for a separate rate classification for the cooperatives.

Discrimination. The Commission's order of May 15, 1962, states in part:

> Southwestern's proffered rate schedule changes, as designated above,[5] would decrease Company's present rates to the twelve Cooperatives concerned by approximately $79,639 (2.08%) per annum for the twelve customers based upon estimated 1962 deliveries of power and energy. For the twelve-month period ending December 31, 1962, Southwestern's revenues from those cus-

---

[5] See Appendix A and the Commission's Order Instituting Investigation of Southwestern, issued May 15, 1962.

> tomers under present rate schedules are estimated to total $3,820,507. Based upon the same estimated deliveries, Southwestern's operating revenues under the proposed rates would be $3,740,868. The reduction would be accomplished through elimination of fuel adjustment clauses, establishment of a maximum annual average bill of 7.5 mills per kwh; and an increase of .4 mill per kwh in Company's present energy charge.
>
> Review and analysis of available office data indicate that certain of Southwestern's Rate Schedule FPC Nos. 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46 and 47, as supplemented and more fully described above, may result in excessive rates or charges; certain of them may place an undue burden upon other of Southwestern's electric utility customers; and some or all of those schedules may be unduly discriminatory, unduly preferential, or otherwise unjust, unreasonable and unlawful within the meaning of the Federal Power Act.

In its petition to intervene of June 13, 1962, the Community Public Service Company alleged rate discrimination against Southwestern. Community's interest in this case, as previously indicated, arises from the fact that it renders electric service in Hansford, Lipscomb and Ochiltree Counties located in the northeastern corner of the Texas Panhandle. North Plains, a cooperative, also renders service in the same counties. Community serves the towns of Spearman (approximately 3,600 population) and Perryton (approximately 8,000 population) and serves communities of less than 1,500 population. It also serves some rural areas extending some 2 to 3 miles on one side or the other of its 115 kv, 69 kv, and 33 kv transmission lines which extend from the Spearman interchange station to Perryton east of Follett and Higgins, and north from Perryton to a 115 kv interconnection with Southwestern to the Texas-Oklahoma state line. As previously stated, North Plains renders electrical service in the three counties served by Community. In addition, it serves the rural areas and outskirts of some of the towns served by Community. It also renders service in the Counties of Hemphill, Roberts, and Hutchinson. The lines of the two electric systems sometimes cross throughout their service areas. The lines of North Plains more or less honeycomb the rural areas while those of Community more generally reach out from its main lines. Until 10 or 15 years ago, the three counties served by both Community and North Plains depended primarily on an agricultural economy consisting principally in the production of grain and livestock. More recently the production of oil and gas has become increasingly more important, and as a consequence Community and North Plains are actively engaged in competition for the electrical loads in this area.

The rates Southwestern charges its investor-owned customers are considerably higher than those charged the cooperatives. Based upon the Staff's cost of service calculations, Southwestern's rate of return for the year ending December 31, 1962, from service rendered the cooperatives was 4.12 percent as compared to rates of return of 11.00 percent from the New Mexico Electric Service Company, 9.50 percent from Community, 6.04 percent from the Cochran Power and Light Company, and 9.14 percent from service rendered to other customers. On a cost of service basis, the Staff concludes that Southwestern had excess revenues of $509,926 on its service to the 3 private utility companies, and $10,688,128 from other customers, but a revenue deficiency for service rendered to the cooperatives amounting to $1,127,703, for the test year 1962. In his direct examination, Southwestern's President, Mr. Watson, testified that his company's pricing policy in respect to the cooperative has always resulted in a less than average system rate of return. On rebuttal, he indicated that his company charges higher than average cost rates for wholesale service to the private companies.

There is little or no difference in the service rendered by Southwestern to the cooperatives as opposed to the 3 private utilities, certainly none as to justify the marked difference in rates. The cooperatives' witness, Van Scoyoc, testified that the cooperatives as a group have a lower purchase power load factor (42.64%) than the private utilities (68.85%). This fact normally would support a higher rate rather than a lower one for the cooperatives. As heretofore indicated both the cooperatives and the private utilities receive three-phase service from Southwestern at voltages ranging from 115 kv to 2.3 kv. Both take service directly from the power supply. Cooperative customers as well as the private utilities receive service from the 66 kv and from sub-transmission networks. Southwestern makes no claim that the service rendered to the cooperatives is secondary or inferior to that furnished to the private utilities.

It is clear from the testimony that Southwestern is earning a higher rate of return from its private utility customers than from the cooperatives (test year), and that this differential is a part of Southwestern's pricing policy. Mr. Watson admitted that the higher rates charged to the private utilities in effect constitute a subsidy in favor of the cooperatives. He testified that the company's stockholders should not be required to carry the burden of the low rates of the cooperatives; that they do not carry this burden, but that Southwestern's other customers (retail and wholesale) bear the burden of paying higher rates. Mr. Watson endeavored to justify the different rates as between the private utilities and the cooperatives by contending that the cooperatives benefited the rural economy which in turn benefited the utilities. But it could also be said that there is necessarily a mutual benefit, a healthy urban economy is beneficial to the rural areas. This is almost self-evident. It does not necessarily follow, however, that Southwestern's service area has improved or that the higher private utility rates are justified because of the low wholesale rates extended to the rural electric cooperatives. These is no sound reason why one class of customers should bear the burden of another. This certainly is not in the public interest, but is contrary to the intent and purpose of Sections 205 and 206 of the Federal Power Act.

It is urged at length on behalf of the cooperatives that there are social and economic reasons which justify Southwestern's lower rates to the cooperatives as opposed to its rates to the utility companies. In support of this contention, the cooperatives introduced considerable testimony at the hearing describing the social conditions in the rural areas in west Texas in the 1930s and 1940s. Evidence was introduced to show that the economy of the area served by the cooperatives had improved since the time when the cooperatives were established and to show that the areas now served by them are presently prosperous. It is argued that this general improvement is attributable to the service of the cooperatives and that the social and economic improvements warrant a lower wholesale rate for the cooperatives. The social and economic conditions which existed in the early '30s provided a sound reason for the legislation under which the cooperatives were established. This is proven by subsequent events. The economic improvement, fortunately, justified the legislation. But it is difficult to see what relevance the economic and social conditions of the '30s now have in this case to determine a proper rate for wholesale electric service.

Southwestern, however, claims that the areas now served by the cooperatives are prosperous and that the economy is based on agriculture, agricultural related industries, gas and oil industries, chemical, mining, and industries related thereto. In respect to some of the cooperatives irrigation accounts for a substantial portion of the electrical load. This is so, particularly in respect to

Bailey County, Roosevelt County Electric, Lighthouse Electric, Lyntegar Electric, Deaf Smith, Lamb County and South Plains. Central Valley serves 2,183 oil loads and Deaf Smith will serve a sugarbeet mill with a load of 1,000 kw in the near future.

Evidence introduced at the hearing discloses that there are wide differences among the cooperatives as to the kwh sales and revenues. Many of them now serve not merely farm loads but large industrial loads. Lea County sells 83.9 percent of its energy for commercial and industrial use. North Plains sells 63.3 percent for this purpose, and four of the other cooperatives sell more than 25 percent for such use. Witnesses for the cooperatives testified that the cooperatives seek to serve not merely the farm loads, but the industrial loads as well which are now springing up in the rural areas.

But notwithstanding the foregoing, it is contended on behalf of the cooperatives that their financial condition is somewhat precarious, that the repayment of the loans made to them by the REA and their successful operation would be seriously jeopardized if the cooperatives are not permitted to freely negotiate low wholesale rates. This contention however, is not borne out by the testimony and the evidence. Although the financial condition of the cooperatives vary their financial stability is rather sound. The Monthly Financial and Statistical Report for December 31, 1962, which is filed by each cooperative with the REA, shows a substantial amount of accumulated patronage capital. These reports show for the year 1962 that although the cooperative, Rita Blanca, had but $29,241 in this fund, only one other cooperative had less than $100,000 and eight others had more than one half million dollars, two of which had more than $3,000,000 in accumulated patronage capital. The managers of the cooperatives testified that although these capital credits are distributed to the members on the books, they are available for use by each cooperative to meet operating expenses, debt payments, or any other emergency expenses that might arise. They also testified that the funds of some of the cooperatives are invested and in some cases are earning more than 2 percent, the rate the cooperatives pay the Federal Government on REA loans. In considering the cooperatives' financial condition, it is not without significance that the smaller and weaker cooperatives have the same wholesale rate as the others. Mr. Watson of Southwestern testified that he was opposed to giving a lower rate to some of the cooperatives, the weaker ones as opposed to others. Mr. Forrest, Chairman of the Cooperatives Power Procurement Committee, testified that the cooperatives are now well managed and could stand on their own two feet.

Although Southwestern ascribes several reasons for its lower rates to the cooperatives, and the cooperatives would justify them on social and economic grounds, the basic reasons for the lower rates are that the cooperatives negotiate as a group, and they threaten to generate their own energy. This is rather manifest from the fact that past rate reductions usually have followed surveys or actions by the cooperatives looking to the establishment of their own generating facilities. The Community Public Service Company purchases almost all its energy and possesses no cheaper source of supply than Southwestern. Thus value of service becomes the chief criterion for Southwestern's wholesale rates to Community. This formula puts the wholesale purchaser largely at the mercy of the seller and is inimical to the interests of the public and the consumer. It has heretofore been rejected by the Commission and accordingly must be rejected here. *South Carolina Generating Company*, 16 FPC 52, 56–59. Similarly, a rate based on bargaining cannot be sanctioned. As was said in the South Carolina case at page 58:

> If we were to approve the rate contained in the contract solely upon the basis that the two contracting utilities have struck a bargain, and that one

> of the parties would cancel the contract unless we did approve it, we would be remiss in our duty to protect the ultimate consumer. Such a rationale could lead only to approval of all contract rates irrespective of the public interest involved contrary to the provisions and purposes of the Federal Power Act.

As previously indicated, Southwestern serves the Community Public Service Company and North Plains at its Spearman Interchange Station at 69 kv from a common bus. This service accordingly can be said to be identical. Although Community renders electric service to rural areas, villages, and towns in the Texas Panhandle, all the communities served except for Spearman and Perryton have a population of less than 1,500 and might be classified as rural areas within the definition of the Rural Electrification Act. 7 U.S.C. 913.

It is manifest from the record evidence that Southwestern renders substantially the same service to the cooperatives as it does to its private utility customers. It is evident that although there are differences between the cooperatives, and as between the cooperatives as a group and the private utility companies, these differences are insufficient to separate the cooperatives from Southwestern's other customers as a distinct class. The evidence also shows that Community is at a distinct disadvantage in competing with the cooperative, North Plains, for industrial and oil well loads, that in recent years Community has lost numerous oil field loads because its rates were higher than those offered by North Plains, and accordingly, it has been unable to offer the same retail rates as North Plains because of the higher wholesale rates paid to Southwestern.

At the hearing, Community's witness, Mr. Stout, testified as to what Community would have paid Southwestern for purchased power for the years 1961, 1962, and the 12-months period ending June 30, 1963, had Community paid Southwestern the rate it charged North Plains (FPC Schedule 25) rather than at Community's existing rate (FPC Schedule 17). His computation was based on the cooperatives' rate before the new filing. He estimated the amount for 1961 at $231,219.49; for the year 1962 at $261,221.72; and for the 12 months ending June 30, 1963 at $274,966.46. As opposed to these computations the amounts paid by Community for the respective years were: 1961—$319,583.97; for the year 1962—$358,190.78 and for 1963—$377,672.46. He testified that the rate paid by Community was about 37.4 percent higher than the rate paid by North Plains. This disparity would be increased by the new filing.

It is evident from the testimony that whatever the social and economic reasons may have been for the establishment of the cooperatives, and whatever their present needs may be for cheap energy, it is clear that these considerations do not justify Southwestern's disparity in rates as between the cooperatives and its private utility customers.

In the recent case of *Wisconsin Michigan Power Company*, Docket No. E-7026 (Opinion No. 432), 31 FPC 1445 at pp. 1450, 1451, the Commission stated:

> In Gulf States Utilities Company the basic test to be used in construing Section 205(b) was stated as follows:
>
> Proper practices and avoidance of undue discrimination requires, except in unusual cases, that once a new rate is adopted by a company it be made available and applied uniformly to all customers of the same class at the same time.
>
> We elaborated upon this test in *Otter Tail Power Company* by indicating that the proper scope of inquiry under Section 205(b) would take into account whether "the same kind of service under substantially similar conditions is rendered" to each of the wholesale customers, and whether

> differences in rates might be justified by "substantial lawful differences in cost of service or operating conditions." Section 205(b) thus does not prohibit all rate distinctions but only discrimination as between customers of the same class, and then only undue discrimination—that which is not justified by differences in cost of service, operating conditions or other such considerations.

In applying these principles to the facts in this case it must be concluded that Southwestern's policies and practices disclose undue discrimination as between the wholesale rates at which it sells energy to the cooperatives as compared to the rates at which it sells to its public utility customer, Community Public Service Company. As noticed above, the disparity before the new filing for the year 1963 amounted to more than 37 percent. This is not a nominal difference, but is so substantial as to be injurious to Community.

The mere fact that Southwestern supplies energy to the cooperatives at a lower rate than to its private utility customers is discriminatory provided they are in the same class. Southwestern admits that the rates are lower and that it is its policy to extend lower rates to the cooperatives. The evidence shows that the difference in rates is substantial, and that as a consequence Community is unable to compete with the cooperatives for industrial loads. The evidence also shows that the service rendered by Southwestern to the cooperatives is comparable to that rendered to its private utility customers. Under the circumstances it necessarily follows that unless Section 205 of the Federal Power Act is rendered meaningless, the practice of Southwestern must be regarded as unduly discriminatory.

But the Cooperatives contend that the Commission has no authority to make a valid finding that the rates to the cooperatives are unduly discriminatory because it lacks authority to order any rate increase. Cooperatives cite *El Paso Natural Gas Company*, 13 FPC 421, 454 (1954) in support of their contention. This contention, as well as the decision cited is based upon Section 5(a) of the Natural Gas Act. The Cooperatives' contention must be rejected for the reason that the Federal Power Act contains no prohibition as is contained in the Natural Gas Act. In addition, the argument advanced has no applicability here since the Commission's jurisdiction runs to the wholesale seller, Southwestern and its rates, rather than to the purchaser.

Allocation. In order to determine a cost of service for more than one customer or for a group of customers it is necessary to make an apportionment of the total costs. As it is applicable to electric utility costs, it is commonly said that this in turn involves three processes: (1) functionalization or the grouping of costs for costing purposes of the plant and facilities as for example, generation, transmission, and distribution; (2) classification of the power pool costs as either demand or energy; and (3) the allocation of costs—the division of the classified costs between respective customers.

In this case, Southwestern and the Staff placed the same transmission facilities and properties in the "power supply" category. This category included generally Southwestern's generating plants, the step-up transformer stations at those plants, and the principal transmission lines, mostly 115 kv which function primarily to interconnect the generating plants and to tie them to the same bus. The cooperatives accepted the specific property assignments made by Southwestern with the exception of the assignment to the retail category of several internal combustion generating plants.

Mr. Lewis Johnson who testified for Southwestern stated that the second category, "common transmission," is the portion of the transmission system which is in common use serving both wholesale customers and other customers.

The third term or category in Mr. Johnson's classification, *i.e.*, "specific," includes items of property which serve any group of customers, cooperatives, private utility companies, or others which are not in joint use.

To arrive at the power supply capacity costs for Southwestern's customers, Southwestern utilized the average and excess method of allocation, the cooperatives utilized the noncoincidental peak method, and the Staff employed coincident and maximum noncoincidental demands. The parties also assigned different percentages of Southwestern's fixed costs on the basis of demand allocation factors. Southwestern allocated 100 percent, the cooperatives 50 percent, and the Staff approximately 80 percent, to all fixed costs in proportion to demand allocation factors. Staff witness Roland testified that demand use should be the primary consideration in the allocation of fixed costs.

In its brief, Southwestern says that it is necessary that its allocation of properties and expenses be a fair one and fair to all classes of customers; that its wholesale sales are subject to regulation by the Federal Power Commission, and its resale sales in New Mexico, Oklahoma and Kansas are subject to regulation by the regulatory commissions of those states. Accordingly, it says that it is of extreme importance to Southwestern that the allocation between wholesale and resale sales be made with the utmost exactitude in order that it could be used not only in this Commission but also when applicable in considering the reasonableness of Southwestern's retail rates in Texas, New Mexico, Oklahoma and Kansas.

Southwestern says that a cost analysis furnishes one but only one of the considerations which enter into the determination of revenue requirements; and that the sole function of a cost analysis is to determine respective cost responsibilities. Its witness, Johnson, testified that the generation and transmission properties should be allocated in accordance with the loads imposed upon the system—the contribution to the system load by each class of wholesale customers and the contribution by Southwestern's retail customers, considered as if for another purchaser. Accordingly, physical properties of the company were allocated or assigned to three categories; namely, (a) power supply, which refers to the steam electric generating stations of the company and the portion of the transmission system which serves to interconnect those stations to form a single integrated power supply, (b) common transmission—which includes the portions of the transmission system which are in common use for serving both general wholesale customers and other customers within specific areas, and (c) specific—which includes items of property which serve any one group of customers, cooperatives, private companies, or others (retail sales) which are not in joint use. Mr. Johnson said the "Common Transmission lines are radials or loops which bring in power from power supply to local load centers; their primary function is other than the interconnection of the steam-electric stations." Southwestern then determined whether costs attributable to demand should be measured by the demand imposed on the system by the cooperatives, private companies and other loads on the system coincidental peak or by the noncoincidental peaks of the cooperatives, private companies and other loads, respectively. Mr. Johnson concluded that under the conditions which exist in Southwestern's system it was reasonable and preferable to use noncoincidental peaks. He then considered the noncoincidental peaks of the various purchasers at the many connecting points during the year, separated as to States and voltage. He was of the opinion that the allocation factors for use in allocating the power supply plant of Southwestern's system should be developed on the basis of the "average-and-excess" method of demand allocations, a method commonly used to recognize diversity in the determination of demand responsibility. He testified that the average-and-excess method is appropriate, that common transmission on the other hand is essentially local in character; that a line which serves the cooperatives rural loads, in many instances also serves Southwestern's substations, which deliver power to rural areas having similar characteristics; and that individual common transmission lines have relatively few loads connected to them. He stated that under these conditions there is less opportunity for diversity and the diversity which is realized is less reliable than that realized under the averaging process that occurs when hundreds of loads are served from a joint-use facility. He considered that the average and excess method of allocation was appropriate for use in power supply but not appropriate in common transmission. Mr. Johnson testified that "certain of the power supply expenses in steam power generation are energy related; that is to say the incidence of expense is a function of energy rather than of demand." He testified further that certain maintenance expenses which are influenced by the output of the plant over a period of time are energy related; and that the remaining expenses of operation and maintenance of steam production, not to be influenced by energy output but to be related to readiness to serve and, therefore, to be demand related. Having obtained the demand-related factors applicable to common transmission, the demand-related factors applicable to power supply, and the energy related allocation factors related to power supply, those factors were utilized in allocations of cost of properties and expenses of operation in order to secure the dollar amounts of investments in operating costs attributable to the wholesale business of Southwestern and divided between the cooperatives and the private companies. Accordingly, production plant costs of $24,735,385 were assigned to the cooperatives, $6,114,604 to the private utility companies, and $92,206,947 to "other."

It is evident that Southwestern incurs greater costs in furnishing electric service at lower voltage or through its own substation and transmission facilities.

Although objection may be taken to the testimony of Southwestern's witness Johnson on minor matters, no serious criticism is justified on his testimony as a whole. But it is pertinent to note that the allocation of costs to wholesale customers without regard to delivery voltages, or to whether service is provided by a substation of Southwestern or of a customer-owned substation, tends to impose undue costs on the private utilities. In addition, the load factor of the cooperatives is lower than the retail loads notwithstanding that the proportionate contributions to diversity by the cooperatives and the higher load factor retail customers are virtually the same. One of the results of the use of the average and excess demand method of cost allocation accordingly is that lower voltage lines are treated as system-wide properties. Considering the particular facts and circumstances in this case it is concluded that the average and excess demand method of allocating costs utilized by Southwestern is unsuitable and unacceptable.

In classifying Southwestern's fixed costs the Cooperatives' witness, Van Scoyoc, used the so-called Atlantic Seaboard Method (*Atlantic Seaboard Corporation*, 11 FPC 43, 56) and allocated 50 percent to demand and 50 percent to energy. He testified that power supply costs are broadly classifiable between fixed and variable components and then allocated to wholesale and to retail customers on the basis of the responsibilities of those customers for the incurrence of such costs. He said that these costs are not wholly fixed or wholly variable. In explanation of his reason for using the 50–50 formula, he stated "that fixed costs are not incurred solely to supply electric energy for a single hour or half hour or for any other short term period during the year. The costs which have been classified as fixed represent operating costs other than fuel, depreciation, taxes other than income, income taxes, and return. A large share of such costs result from investment in production and transportation facilities and such facilities are used throughout the year as well as during peak periods." He indicated that variable costs include those which vary with energy sales; that fixed costs include those which are dependent on energy sales; and that fixed costs depend largely upon plant investment which in turn depend on capacity of the system.

Mr. Van Scoyoc admitted that fixed costs of a supplier bear a direct proportion to the demand use of the system and that variable costs bear a direct proportion to the energy sold. He was of the opinion that a high load factor customer is more valuable to the supplier because the supplier does not need to build as much capacity in relation to annual use for the high load factor as for the low load factor customer. Notwithstanding these considerations, the witness utilized the 50–50 cost classification formula and endeavored to justify its use essentially, as he said, by Southwestern's financial welfare, his own judgment as to applicability, and because it had been accepted by the Commission in natural gas cases.

The Staff contends that the Seaboard method of classifying fixed costs was conceived in a case in which a natural gas pipeline company had a considerable amount of unused pipeline capacity available for use by off-peak or interruptible customers, and was designed to preclude "free rides," for interruptible customers using that excess capacity. The Staff says that Southwestern unlike the pipeline company in the Seaboard case has no interruptible customers.

In the Cooperatives' cost allocation no distinction is made between customers who own their own step-down substations to obtain service from Southwestern's 115 kv lines and those who obtain service at lower voltages by means of substations owned by Southwestern. Since the costs associated with the supply of large loads at 115 kv through customer-owned substations is less than those associated with the supply of small loads at low voltage service through one or more of Southwestern's substations, the Cooperatives' cost allocation is improper. Whether the 50–50 formula should be applied in a particular case depends on the facts and circumstances. The Commission has sanctioned other allocations in the past without rigid adherence to one method alone. *Pennsylvania Water and Power Co.*, 8 FPC 1, 86; *Public Service Company of Oklahoma*, 25 FPC 656, 662. Demand use should be a primary consideration in allocating fixed costs because it ultimately determines the system's electrical capacity and in turn the fixed costs of the generating and transmission facilities which a supply company such as Southwestern is required to install. In the present case the demand responsibility of the cooperatives is greater than their energy responsibility. To use the 50–50 formula in the present case would result in an undue shifting of costs from the low load factor customer to the high, from the cooperatives to the private utility companies. In view of this and of Mr. Van Scoyoc's own admissions we think it is inappropriate to use the 50–50 formula in this case. It is concluded, therefore, that the facts and testimony of record do not properly support the 50–50 formula and it is accordingly rejected.

In developing its rate base and in allocating a cost to wholesale customers the Staff segregated Southwestern's properties into: (1) power supply, (2) the 115 and 66 kv transmission network (referred to as the 66 kv network), (3) subtransmission network (including 44—33 and 22 kv) facilities, (4) facilities used exclusively for retail service ("Other"), (5) facilities used exclusively for wholesale customers ("Specific"). With this in mind, the Staff adopted three costing levels to indicate that the cost of a kilowatt or kilowatt hour increases as it progresses from the generators through a series of successive lower voltage networks toward the customer's meter.

The power supply system, according to the Staff, includes all of Southwestern's steam electric generating plants, the step-up transformer stations at those plants, and those transmission lines, mostly 115 kv which function primarily to interconnect the generating plants and in effect tie them to the same bus. The 66 kv network consists of transmission facilities, including switching and transformer equipment at the power supply end, used to transmit energy from the power supply system to points of delivery at transmission voltages to wholesale customers and to Southwestern's retail distribution centers. Most of the investment in this category consists of 66 kv facilities, although some 115 kv facilities are included, since the principal function of such 66 kv and 115 kv facilities is to transmit energy from the power supply system to distribution centers and to wholesale customers. The subtransmission network consists of transmission facilities, including switching and transformer equipment at the 66 kv network end, used to transmit energy principally from the 66 kv network to points of delivery at subtransmission voltages to wholesale customers and to Southwestern's retail distribution substations. Some lateral 115 kv lines are used exclusively to transmit energy from the power supply system to Southwestern's retail customers and there are a number of 66 kv and low voltage lines and connecting terminal facilities which are used exclusively to furnish service to retail customers. An example of an exclusively used line is the 9.5 miles of 115 kv line extending from the point at which it taps the 115 kv line extending from the Texas County interchange to the Beaver County interchange in Oklahoma to the Texas-Oklahoma boundary north of Perryton, Texas. The cost of this tap line, $40,000 of which was contributed by Community Public Service Company is charged in its entirety to that company. The 66 kv line extending south from Carlsbad is an example of a line used exclusively for retail service. The 66 kv line extending from Magic City to the Texas-Oklahoma boundary east of Amarillo and is charged entirely to two cooperatives. In his direct testimony, Mr. Roland calculated the gross plant investment as of December 31, 1962 (exclusive of $1,730,897 of completed construction in progress) in each of the five property groupings to be as follows:

	Investment	Percent total
Power Supply	$140,351,481	48.84
66 kv Network	18,132,908	6.31
Subtransmission Network	3,720,167	1.30
Specific to Wholesale	1,333,332	.46
Specific to Other	123,825,620	43.09
Total	287,363,508	100.00

Mr. Roland was of the opinion that demand use should be the primary consideration in the allocation of fixed costs and that the appropriate demand responsibility of the cooperatives and private companies were about midway between their coincident and noncoincident demand ratios. He testified that cost classification and cost allocation techniques must be adapted to, or depend upon the facts of each case. He testified further that the demand factor of the cooperatives is much greater than their energy factor, whereas the reverse is true of the private utility customers and Southwestern's retail customers; or, in other words, that the load factor of the cooperatives is much lower than that of Southwestern's other two customer groups.

The Staff contends that the segregation of Southwestern's common transmission by states results in an excessive allocation of costs to the Community

Public Service Company and that all wholesale customers served at the same costing level should receive similar treatment irrespective of state boundaries. We agree. The Staff's reasons are that only one 115 kv common transmission line is in Oklahoma, and it extends 64.57 miles from Texas County to the Beaver Interchange; that on the basis of maximum demands, some 65 percent of the cost of that line is allocated to Community which is located wholly within the State of Texas. This line supplies 2.98 mw to loads in the State of Oklahoma and 5.74 mw to Community in Texas. The Staff states that:

> A tap line extending 9.5 miles to the Oklahoma-Texas border, where it connects with a Community line continuing to Perryton, Texas, was assigned 100 percent to Community (Tr. 878). Although that portion (31 miles) of the Texas County-Beaver Interchange line extending from the tap line to Beaver is of no benefit to Community, 65 percent of its costs were, nevertheless, charged to Community. If the Texas County-Beaver line had been constructed about 10 miles to the south, it would have been located in Texas. In that case it would have been included, for allocation purposes, with a number of other 115 kv lines in Texas. The Perryton load likewise would have been included with the other Texas loads served from 115 kv lines with the result that much less common transmission cost would have been allocated to Community.

The staff contends that the partitioning in the circumstances in this case results in the allocation of that share of costs to only one instead of to all 115 kv customers in Texas so that Community is allocated excessive costs.

Cost of Service. At the hearing the Staff and the Cooperatives furnished cost-of-service analyses, both on a company-wide basis and as allocated to the wholesale customers, while Southwestern submitted a "Summary of Earnings" relating to the wholesale service only.[6] The parties did not depart appreciably from one another in the amounts each used for plant investment and operation costs. Their differences result mainly from different classification and allocation methods, different treatment of the Federal Income Tax allowances, some difference in rate base elements and a proper rate of return. The Operating expenses (company-wide) of the Staff were less than Southwestern's and of the Cooperatives by $203,748, attributable to a Staff adjustment reducing gross receipts taxes. Each of the parties reflected the plant facilities investment and operating costs as related to the wholesale electric customer of Southwestern for the test year 1962.

The Staff's cost of service of $51,075,574 (company-wide) after undergoing several revisions (Staff Brief, Appendix A, Sheet 2) was allocated to the wholesale customers in the amount of $7,572,000 of which $5,943,920 pertained to cooperative business and $1,628,080 related to the 3 private companies. This analysis reflected an average beginning and year end net investment rate base of $37,660,937, to which a 6-percent rate of return was applied. The Federal Income Tax allowance of $653,923, as allocated to the wholesale business, was computed to conform with Public Law 88–272 and the Commission's Opinion No. 417.

---

[6] Southwestern's Exhibits Nos. 12 and 20, Cooperatives' Exhibit No. 26, and Staff Exhibits Nos. 72, 72–B, and 72–C were the original cost of service exhibits of the parties. However, Southwestern prepared Exhibit No. 21 using an average rate base for comparison with Staff Exhibits No. 72–C, while Staff Exhibits were revised in its brief, in Appendix A, to reflect income tax revisions in accordance with the Commission's Opinion No. 417, 31 FPC 208, and Public Law 88–272, 78 Stat. 19. (Investment Tax Credit.) The revised exhibits of Southwestern and the Staff together with Cooperatives' Exhibit (No. 26) are considered comparable for purposes herein discussed. These exhibits are set forth in attached appendices to this Decision.

The Cooperatives' cost of service ($47,124,777—company-wide), for the test year 1962, was allocated to the wholesale customers in the amount of $4,788,329 relating to the Cooperatives, and $1,531,181, applicable to the private utilities, for a total of $6,319,510 relating to the entire wholesale business. (Exh. 26, Sch. 2, Sheets 1 and 2). The return allowance used was 5.55 percent applied to an average net investment rate base. The Cooperatives deducted from the rate base the average accumulated deferred income taxes of $14,404,828. The Federal Income Tax allowance totals $307,540 applicable to the wholesale customers.

Southwestern's "Summary of Earnings" (Exh. No. 21, Sch. A-1) for the 12 months ended December 31, 1962, shows, among other items, operating expenses, depreciation and amortization expenses, which when totaled amounted to $5,174,980 as assigned and allocated to the wholesale customers for the year 1962. The sum of $3,680,158 of the total so assigned is applicable to the Cooperatives, while $1,494,822 is related to private companies. The rate of return developed on this statement is a realized rate of return earned by Southwestern on its wholesale business only during 1962. This realized return was 4.95 percent (wholesale customers overall) and was obtained by relating the operating revenue of $1,778,333 to the average net investment rate base of $35,932,512. Southwestern's financial witness sponsored a 7.5–8.0-percent overall company rate of return. This statement also shows Federal Income Taxes of $507,016 as the assigned amount to the wholesale business.

The table below contains a comparative summary of the cost of service as assigned and allocated to the wholesale customers:

As assigned and allocated

	Total firm wholesale	Cooperatives	Private utilities
Staff (Appendix A of Brief)	$7,572,000	$5,943,920	$1,628,080
Intervenor Cooperatives (Exhibit 26, Sch. 2)	6,319,510	4,788,329	1,531,181
Southwestern:			
Operating Expenses (Ex. 21, p. A-1)	5,174,980	3,680,158	1,494,822
Return @ 7.5% [1]	2,694,938	2,195,462	499,476
Total	7,869,918	5,875,620	1,994,298

[1] Return was not included as part of a proposed cost of service on Southwestern's Exhibit 21, page A-1, however, for purposes of comparisons above, a 7.5 percent return has been applied to Southwestern's wholesale rate base shown on page A-1.

Federal Income Tax. Southwestern's Federal Income Tax allowance applicable to its wholesale customers is shown at present rates as $507,016 and at proposed rates as $454,131 (Summary of Earnings, Exh. 21, p. A-1, A-2). In its calculation Southwestern used a 52 percent effective tax rate. It also used guideline depreciation and flows through the savings to earned income. It normalized tax deductions arising from use of rapid depreciation expense write off provisions of the Internal Revenue Code rather than permitting the tax saving to "flow through" to benefit the ratepayer. Southwestern makes no reduction from the rate base for accumulated deferred tax balance.

The Cooperatives show a Federal Income Tax allowance for Southwestern on a company-wide basis of $2,233,510 of which $307,540 has been allocated to wholesale service (Ex. 26, Sch. 2). Although this calculation was made using a 52 percent Federal Income Tax rate, the Cooperatives believe a 48 percent rate should be used by Southwestern in the future to conform with the tax rates under the Revenue Act of 1964. The Cooperatives' calculation also reflects "actual" tax expenses (related to 5.55 percent rate of return) with "flow through" of all tax savings. The 1962 investment tax credit was used as a reduction of the tax allowance.[7] (Under Public Law 88–272 this treatment would be optional with Southwestern). Cooperatives also reflected as credits to the cost of service taxes deferred in prior years—these amounts reduced the cost of service by $83.878 (liberalized depreciation) and $608,108 (accelerated amortization). The latter credit substantially reflects the accounting entries Southwestern is recording in connection with "flow through" of this deferred tax accumulation.

In respect to the treatment of accumulated deferred tax balances, the Cooperatives have deducted from the cost of service rate base an amount of $14,404,828 arising from accelerated amortization (Sec. 168) in the amount of $12,631,613, and arising from liberalized depreciation (Sec. 167) in the amount of $1,773,215. The witness for the Cooperatives contends that the $14,404,828 deduction from the rate base gives recognition to the equitable principle that consumers should not be required to pay a return on capital which the consumers furnish to the utility.

The Staff's Brief (Appendix A) reflects revisions made in accordance with the Commission's Opinion No. 417 issued February 3, 1964, 31 FPC 208, and Public Law 88–272, and shows a Federal Income Tax allowance for Southwestern (company-wide) of $3.963,170 of which $653,923 has been allocated to the wholesale business. The Staff used a 52 percent effective tax rate in its original calculation, but in its revision (Appendix A) uses a 50 percent and 48 percent tax rate to conform with the new corporate tax rate under the Revenue Act of 1964. Concerning accumulated deferred Federal Income Taxes, the Staff deducted from the cost of service (company-wide) rate base an amount of $2.263,293 representing accumulated deferred taxes arising from liberalized depreciation. The Staff did not use the accelerated amortization deferred tax balance amounting to over 12 million dollars, as did the Cooperatives as a deduction from the rate base. The Cooperatives contend that the accumulated deferred taxes arising under Section 168 (accelerated amortization) represents collections from customers well in advance of any possible need of the funds for tax payment, and that all of Southwestern's average accumulated deferred taxes (including those applicable to liberalized depreciation) should be deducted in computing the rate base.

The Staff's calculation of the Federal Income tax allowance in the cost of service with "flow through" of the tax savings, and its treatment of accumulated deferred income taxes as related to liberalized depreciation only in reducing the rate base, are proper interpretations of these items in accordance with the Commission's Opinion No. 417. We also adopt the Staff's position regarding normalization of the investment tax credit for rate-making purposes. We do not believe that Opinion No. 417 can appropriately be construed as sanctioning "feed back" of deferred tax balances as advocated by the Cooperatives.

---

[7] Under date of February 26, 1964, and after the record was closed in this case, Congress enacted Public Law 88–272, 78 Stat. 19, which provided in section 203(e) that:

Treatment of Investment Credit By Federal Regulatory Agencies.—It was the intent of the Congress in providing an investment credit under section 38 of the Internal Revenue Code of 1954, and it is the intent of Congress in repealing the reduction in basis required by section 48(g) of such Code, to provide an incentive for modernization and growth of private industry (including that portion thereof which is requested). Accordingly, Congress does not intend that any agency or instrumentality of the United States having jurisdiction with respect to a taxpayer shall, without the consent of the taxpayer use—

(1) in the case of public utility property (as defined in section 46(e)(3)(B) of the Internal Revenue Code of 1954, *more than a proportionate part (determined with reference to the useful life of the property with respect to which the credit was allowed)* of the credit against tax allowed for any taxable year by section 38 of such code * * * to reduce such taxpayer's Federal income taxes for the purpose of establishing the cost of service of the taxpayer or to accomplish a similar result by any other method. [Emphasis supplied.]

Rate Base and Return. The Cooperatives submitted a company-wide rate base for Southwestern of $217,457,925, to which was applied a rate of return of 5.55 percent providing a return in dollars of $12,068,915, which was included in a company-wide cost of service and appears as allocated to the wholesale customers in two amounts—$1,279,981 (Cooperatives) and $381,833 (private utilities) for a total of $1,661,814, as the return applicable to the entire wholesale service (Exh. 26, Sch. No. 4, 2).

The Cooperatives rate base was prepared on a company-wide basis of average balances at year's end for years 1961 and 1962, for plant in service, construction work in progress, accumulated provision for depreciation and contributions in aid of construction. The Cooperatives deducted $14,404,828 from the averaged net plant investment, as representing the average accumulated deferred income taxes. This total is shown (Exh. 26, Sch. No. 4–B) as $12,631,613, being the average accumulated deferred income taxes under Section 168—Accelerated Amortization, and $1,773,215, the average accumulated deferred taxes under Section 167—liberalized depreciation.

Cooperatives' rate base included working capital of Materials & Supplies, Prepayments, cash requirements (⅛ of operating expenses), less a 50 percent Federal Income Tax credit, netting to $2,442,814 (Exh. 26, Sch. 4–C).

The Staff prepared a company-wide rate base for Southwestern amounting to $228,248,104 using the average (for years 1961–62) of items similarly included by Cooperatives, the important single exception being that Staff did *not* deduct the amount of $12,631,613 relating to deferred taxes (accelerated amortization) from its net investment in the rate base (Appendix A to Brief).

Of the company-wide total rate base, Staff allocated to the wholesale service $37,660,937 and applied thereon a 6 percent rate of return, which in dollars amounted to $2,259,656.

Southwestern's Exhibit (No. 21, page A–1) shows a rate base averaged for years 1961–62 of $35,932,512 as applicable to the wholesale service only, of which $29,272,828 is assigned to the Cooperatives and $6,659,684 is assigned to private companies. No deductions for accumulated deferred taxes appears in Southwestern's rate base.

The following table shows a comparison of return in dollars as proposed by the parties:

Dollars of return on Southwestern's rate base at proposed rates of return

(Wholesale service only)

	Total	RECs or Cooperatives	Private Utilities
Cooperatives—5.55%	$1,661,814	$1,279,981	$381,833
Staff—6%	2,259,656	1,861,135	398,521
Southwestern—7.5%	[1] 2,694,938	2,195,462	499,476
Southwestern—8%	[1] 2,874,601	2,341,826	532,775

[1] These *amounts* of return were *not* included by Southwestern as part of a proposed cost of service.

Realized Rates of Return. In its Summary of Earnings, Southwestern shows its realized rates of return from its 1962 wholesale sales to cooperative customers and to the 3 private utility customers on the basis of present and proposed rates.

(Exh. 21). As to *present* rates, the firm wholesale business realized a return of 4.95 percent (operating income as a percent of rate base), of which the return was 3.88 percent from the cooperatives and 9.64 percent from the private companies. If the new *proposed* rates had been in effect throughout the year, the overall return from wholesale customers would have been 4.81 percent, of which 3.71 percent would be realized from sales to cooperatives, and 9.64 percent from private utilities.

The Staff's brief, shows comparable realized rates of return from the wholesale sales. (In Appendix A, Sheet 2). As related to *present* rates this statement shows an overall realized return from the wholesale sales of 5.21 percent, of which the return from cooperative customers is 4.12 percent and that of private companies averages 10.29 percent. At *proposed* rates the realized rate of return from cooperatives drops to 3.88 percent from 4.12 percent shown for present rates. These percentages are tabulated as follows:

Realized rates of return on firm wholesale sales as a percent of rate base

	Present rates	Proposed rates
Southwestern's Exh. 21 [1]	*Percent*	*Percent*
Cooperative Customers	3.88	3.71
Private Companies	9.64	9.64
Total Wholesale	4.95	4.81
Staff Appendix A to Brief [1]		
Cooperative Customers	4.12	3.88
Private Companies	10.29	10.29
Total Wholesale	5.21	5.01

[1] Southwestern's Exhibit 12 and Staff's Exhibit 72-C were the original exhibits showing realized rates of return. Exhibit 21 uses an *average* rather than *year end* rate base. Appendix A to Staff Brief shows latest Staff position inclusive of changes resulting from computing allowable taxes in conformity with Public Law 88-272 and Commission's Opinion No. 417.

Cooperatives' Exhibit No. 26, Schedule No. 1, is applicable only to wholesale sales to cooperative customers during the year 1962. It relates Southwestern's cost of service of $4,788,329 with revenues at *present* rates of $4,815,546 indicating an excess of revenues of $27,217. This cost of service includes a return of 5.55 percent which the Cooperatives state is an entirely fair return on Southwestern's rate base. Therefore, Cooperatives conclude that since Southwestern's wholesale rate to them is yielding a return in excess of the 5.55 percent rate as shown by its exhibit, the return earned is entirely adequate.

Proposed Rates of Return. At the hearing, Southwestern presented evidence to show that it is entitled to a rate of return of between 7½ to 8 percent (which provides from 14.75 to 16 percent on common equity), the cooperatives recommended 5.55 percent (which provides 9 percent on common equity), and the Staff recommended 5.875 percent (which provides 11.04 percent on common equity). In its brief in the light of the Commission's Opinion No. 417 and Public Law 88-272, 78 Stat. 19, the Staff revised its recommendation to 6 percent (provides 11.3 percent on common equity).

Southwestern's witness, Dr. Langum, testified that he based his opinion (return of 7½-8 percent) on the cost of capital for Southwestern, the overall rate of return earned by other electric utilities in Texas, New Mexico and Oklahoma, and on the overall rate of return earned by reasonably comparable unregulated enterprises. In respect to his approach in determining his rate of return, he stated that a regulated enterprise should be afforded the opportunity to earn a rate of return on the value of its property equal to that being earned by other business undertakings with corresponding risks and uncertainties; and that the ability to attract capital and maintain financial integrity must likewise receive consideration as tests of fair return, other than comparable earnings as such only depend on tests of comparable earnings.

In his studies of the cost of capital for Southwestern, Dr. Langum said he used capital structure ratios as follows: long term debt 56 percent, preferred stock 11 percent and common equity 33 percent. He said that the cost of long term debt to Southwestern should be computed at 3.87 percent, influenced largely by its presently imbedded costs on funded debt of 3.58 percent weighed together with probable cost of new issues. He indicated that the cost of preferred stock capital for Southwestern is 4.63 percent, determined by weighing together the imbedded cost of 4.59 percent of Southwestern's present preferred stock with additional issues to be offered in the next few years at about 4.75 percent; that the cost of common stock capital and a reasonable return of earnings on common equity for Southwestern with a common equity ratio of 33 percent lies in the range from 14.75 percent to 16 percent. He said the lower limit of this range is based on the actual rate of return of common equity of 14 comparable electric utilities in Texas, New Mexico and Oklahoma in 1962 without consideration of their much higher common equity ratio. In respect to the overall rate of return achieved by the other electric utilities in Texas, New Mexico and Oklahoma, Dr. Langum said he studied earnings experienced by these utilities from 1957 through 1962, and the medium rate of return was about 7.5 percent and was over 8 percent in 1962. He said the medium rate of return on total capital from 1957 through 1962 was about 7.50 percent and was over 8 percent in 1962. As to the unregulated companies, he determined that a group of 16 was reasonably comparable in risks and uncertainties to Southwestern and that a rate of return for Southwestern of no less than 8 percent was indicated by the rate of return on net assets of such comparable unregulated companies. He said his judgment as to the fair rate of return for Southwestern was based on these considerations.

The original rate of return proposed by Staff witness McGrath was 5.875 percent, which was developed in a cost of capital study showing accumulated deferred income taxes of $14,781,183 ($14,764,663) at 1.50 cost, producing a return of 11.04 percent on common equity. (Exh. 74, page 18). The Staff revised the foregoing, following the issuance of the Commission's Opinion No. 417, proposing finally an overall rate of return for Southwestern of 6 percent. Appendix F hereto, shows the cost of capital reflecting Staff's latest position, containing an 11.3 percent return on Southwestern's common equity. The changes accounting for the increase in common equity return from 11.04 percent to 11.3 percent is attributable to accumulated deferred income taxes being reduced from $14,781,183 to $12,501,370; the difference of $2,279,813 ($2,263,293) of deferred tax accruals, arising from liberalized depreciation, was eliminated in the Staff's revised cost of capital. (Staff Brief, p. 45.)

The Cooperatives took the position that Southwestern should not be allowed an overall rate of return exceeding 5.5 percent for application to an original cost rate base. This would produce a 9 percent return to the common equity (Appendix F).

Cooperatives take a strong position regarding accumulated deferred tax accruals, both as arising from liberalized depreciation ($1,773,215) and accelerated amortizations ($12,631,613) totaling ($14,404,828), proposing that the total of these accruals should be deducted from the rate base. This handling would dispose of any question as to permitting a 1.50 percent rate or any other rate of return on such accruals in determining the cost of capital. Cooperatives' rate base exhibit shows a deduction of $14,404,828 of accumulated deferred tax accruals, and no accruals of deferred taxes are shown in its cost of capital calculations (Coop. Brief, p. 36).

Southwestern's main contention in support of a 7.5–8.0 percent overall rate of return is that a fair return on common equity is governed by the return of other utility companies in Texas and neighboring states, and that the earnings of some 14 such companies support this rate. In this connection it relies on *Bluefield Water Works and Improvement Co.* v. *Public Service Commission*, 262 U.S. 679, 692; *F.P.C.* v. *Hope Natural Gas Co.*, 320 U.S. 591, 692; and *Colorado Interstate Gas Co.* v. *F.P.C.*, 324 U.S. 581 As to the cases, there can be but little quarrel with the principles enunciated in them; the test rather is as to the application of the principles. On first sight it is quite plausible to select as a guide other utility companies in the same geographical area as Southwestern—there is an analogy in the law of eminent domain. But on closer examination, it is apparent that Dr. Langum's selection is unsatisfactory for the reason, among others, that it is too restricted geographically. Some of the companies utilized are quite small, other are confined to local operations and have different risks. Southwestern is a medium to large company whose stock is traded on the large stock exchanges.

But if the views of Dr. Langum are unacceptable as to what is a fair and reasonable rate of return for Southwestern those of the Staff witness are not entirely adequate. Mr. McGrath presented a report of "Cost of Capital and Rate of Return Study" and recommended a rate of return of 5.875 percent. He did not testify, however, why such rate was particularly applicable or appropriate for Southwestern. In its brief, the Staff recommended an overall rate of return of 6 percent based on an intervening decision of the Commission. (Opinion No. 417.) After considering the evidence relative to the cost of service, operating expenses, rate base and return, Federal Income Tax allowance, the assignment and allocation of such costs to the wholesale service as submitted by the parties, and the other relevant facts of record, it is concluded that the cost data developed by the Staff as related to Southwestern's wholesale service is to be preferred and accordingly is accepted.

Lea County. Lea County Electric Cooperative relies upon its own generation for more than 85 percent of its energy requirements. It serves a rural area of some 4,000 square miles, as well as the City of Lovington having a population of about 10,000 persons. Lea County serves about 3.04 customers per mile. It has an agreement with Southwestern for the purchase of 15,000 kv stand-by capacity for delivery at Denver City, Texas, at 115 kv. Lea County says that for the years 1959, 1960 and 1961, it paid the same rate to Southwestern as the other cooperatives except for a minimum demand charge of 4,000 kw containing a 100 percent ratchet for the six summer months, and that the foregoing premium apparently constituted a proper payment for its supplemental service until Southwestern's new filings in 1962. Lea County contends that it belongs in the same class as the other cooperatives. The evidence substantiates this. The cost to Southwestern of providing service to Lea County is that at the power pool level. The Staff's cost allocation to Lea County appears fair and reasonable. On the basis of the record we conclude that Lea County is entitled to the same rate as the other cooperatives with the addition, however, of a minimum charge reflecting the stand-by nature of Southwestern's capacity obligation.

It is clear that when Congress passed the REA Act there was no thought that the cooperatives would present any serious competition for investor-owned utility companies. It was intended that the cooperatives would supply energy in the rural areas where none had previously been available and where it was unprofitable for the private companies to provide the service. The record in this case discloses, however, that this situation no longer exists in respect to the parties here concerned. Several of the cooperatives now serve urban areas as well as rural areas and industrial as well as farm loads. The investor-owned utility companies, on the other hand, including Community are not confined to serving only urban areas. The investor-owned companies are by and large required to serve any customer applying for service within their service areas; the cooperatives serve only members. That there is direct competition between the investor-owned companies and the cooperatives is openly admitted. Southwestern says that Community's business is primarily urban and that it wants the same rate as the cooperatives—a favorable rate for Community's business. On the other hand, if the cooperatives are required to pay the same rate as the investor-owned companies some of the cooperatives (those not having industrial loads) would suffer a hardship.

The rates provided in the new filings, result in part at least, from economies and savings which Southwestern anticipates from new generating installations to be placed in operation in 1964 and 1965. The rates of Community and the other investor-owned companies remain unchanged. As noted, Community's rates prior to the new filings were some 37 percent higher than those of North Plains. Southwestern's return from the sales to the cooperatives is between 3 and 4 percent as compared to a return of about 9 percent on its sales to the private companies. We are of the opinion that on the whole record there is undue discrimination and that Southwestern should submit new filings which are just and reasonable and in accordance with the cost of service principles set forth herein and which are nondiscriminatory.

FINDINGS AND CONCLUSIONS

Upon consideration of the record, briefs and arguments of counsel, it is found and concluded, in addition to the findings and conclusions heretofore stated, that:

(1) The Southwestern Public Service Company (Southwestern) is a corporation organized and existing under the laws of the State of New Mexico. It owns and operates facilities for, among other things, the transmission and sale at wholesale of electric energy transmitted from points of generation in the States of Texas, New Mexico and Oklahoma, to points of consumption outside the state in which it is generated, which facilities are exclusive of those used for the generation of electric energy or used in local distribution or only for the transmission of electric energy in intrastate commerce or over facilities for the transmission of electric energy consumed wholly by the transmitter.

(2) Southwestern is a public utility within the meaning of Section 201 of the Federal Power Act and is subject to the jurisdiction of the Federal Power Commission.

(3) Southwestern sells electric energy at wholesale for resale to 3 investor-owned utility companies and to 17 rural electric cooperatives under rate schedules filed with the Federal Power Commission.

(4) In making each of the sales of electric energy at wholesale for resale under the rate schedules referred to in the Commission's suspension order of May 15, 1962, Southwestern transmits and sells electric energy at wholesale in interstate commerce for resale within the meaning of Sections 201, 205 and 206 of the Federal Power Act.

(5) Southwestern renders similar or comparable service to its investor-owned wholesale for resale customers, as rendered to its cooperatively owned wholesale for resale customers.

(6) All of Southwestern's firm wholesale for resale customers constitute a similar class of service.

(7) The Community Public Service Company (Community) and the North Plains Electric Cooperative (North Plains) are engaged in active competition for electric retail customers.

(8) The service rendered by Southwestern to Community is comparable to the service it renders to North Plains.

(9) Southwestern's unit cost of service in supplying energy to Community is no greater than its cost of service in supplying energy to North Plains.

(10) The wholesale rate for energy charged to North Plains by Southwestern is lower than that charged to Community.

(11) Community is injured and continues to be injured by reason of the higher rates charged to it by Southwestern as compared to those charged to North Plains for comparable service.

(12) By reason of the disparity in rates, Southwestern practices unlawful rate discrimination against Community in favor of North Plains.

(13) Southwestern charges its cooperatively owned wholesale for resale customers lower rates than it charges its investor-owned wholesale for resale customers.

(14) In respect to its wholesale electric rates, Southwestern accords preferential treatment to its cooperatively owned wholesale for resale customers.

(15) In its practice in according preferential rates to its cooperatively owned wholesale for resale customers, Southwestern thereby places a burden on its investor-owned wholesale for resale customers.

(16) Southwestern's practice of granting preferential rates to its cooperatively owned wholesale for resale customers is not justified by economic and social conditions as disclosed by the record.

(17) Southwestern's practice of granting preferential rates to its cooperatively owned wholesale for resale customers constitutes an undue and unlawful discrimination against its investor-owned wholesale for resale customers.

(18) Southwestern's total cost of wholesale service for its 19 wholesale customers determined on the basis of the cost of service, and net investment rate making principles, and on the basis of liberalized depreciation in accordance with the *Alabama-Tennessee Natural Gas Company* case (Opinion No. 417, February 3, 1964) and the Revenue Act of 1964, is $7,572,000. The cost allocable to Southwestern's wholesale customers and realized rate of return are as follows:

		Percentages
New Mexico	$1,242,680	11.00
Community	279,760	9.50
Cochran	105,640	6.04
Lea County	197,426	3.17
Other Cooperatives	5,746,494	4.16

(19) A fair and reasonable overall rate of return for Southwestern based on its wholesale for resale customers is 6 percent.

WHEREFORE, *it is ordered*, subject to review by the Commission on appeal, or review on its own motion, as provided in its Rules of Practice and Procedure, that Southwestern file with the Federal Power Commission within 60 days:

(A) Rate schedules superseding those referred to in Finding (4) above, embodying rates and charges designed to produce revenues from service to Community Public Service Company, New Mexico Electric Service Company, Cochran Power & Light Company, Lea County Electric Cooperative, Inc., Bailey County Electric Cooperative, Inc., Swisher County Electric Cooperative, Inc., Central Valley Electric Cooperative, Inc., Tri-County Electric Cooperative, Inc., South Plains Electric Cooperative, Inc., Roosevelt County Electric Cooperative, Rita Blanca Electric Cooperative, Inc., North Plains Electric Cooperative, Inc., North Fork Electric Cooperative, Inc., Lyntegar Electric Cooperative, Inc., Lighthouse Electric Cooperative, Inc., Lamb County Electric Cooperative, Inc., Greenbelt Electric Cooperative, Inc., Farmers Electric Cooperative, Inc., and Deaf Smith County Electric Cooperative, Inc., not in excess of that portion of Southwestern's overall cost of service reasonably and properly allocated to those nineteen customers referred to in Finding (18) above; with appropriate provisions governing maximum demands and quantities of electric power and energy available thereunder, minimum billing arrangements, reflecting Southwestern's capacity obligation to Lea County Electric Cooperative, Inc., high voltage discounts, together with the company's rules and regulations and other terms and conditions as may be reasonable and proper; *or*

(B) Rate schedules for Community Public Service Company, New Mexico Public Service Company, Cochran Power & Light Company, and Lea County Electric Cooperative, Inc., superseding Rate Schedules FPC Nos. 14, 15, 16 and 17, reflecting rates at the same level as those presently charged Southwestern's 15 other wholesale for resale customers, namely: Bailey County Electric Cooperative, Swisher County Electric Cooperative, Central Valley Electric Cooperative, Tri-County Electric Cooperative, South Plains Electric Cooperative, Roosevelt County Electric Cooperative, Rita Blanca Electric Cooperative, North Plains Electric Cooperative, North Fork Electric Cooperative, Lyntegar Electric Cooperative, Lighthouse Electric Cooperative, Lamb County Electric Cooperative, Greenbelt Electric Cooperative, Farmers Electric Cooperative, and Deaf Smith County Electric Cooperative, with appropriate provisions governing maximum demands and quantities of electric power and energy available thereunder, minimum billing arrangements, reflecting Southwestern's capacity obligation to Lea County Electric Cooperative, high voltage discounts, together with the Company's rules and regulations and other terms and conditions as may be reasonable and proper; and continue to bill the 15 cooperatives referred to above under Rate Schedules FPC Nos. 36, 47, Supplement No. 1, 37, 52,* 46, 45, 48, 49, 44, 43, 40, Supplement No. 1, 42, 41, 39, 38.

HARRY C. SHRIVER,
Presiding Examiner.

---

*Rate Schedule FPC No. 52 effective February 17, 1964, after the hearing record was closed in this proceeding, supersedes Rate Schedule FPC No. 21, which was included in the Commission's investigation order issued May 15, 1962.

APPENDIX A

Docket No. E-7038

Public utility and rural cooperative customers of the Southwestern Public Service Company with current and proposed changed rate schedules (adapted from Commission's order of May 15, 1962)

Customer	Designation of currently effective rate schedules	Designation of proposed changed rate schedules
New Mexico Electric Service Co., Hobbs, New Mexico.	FPC No. 14, Supplement No. 1.	
Cochran Power & Light Co., Morton, Texas	FPC No. 15, Supplement Nos. 1 and 2, FPC No. 34.	
Lea County Electric Cooperative, Inc., Lovington, New Mexico.	FPC No. 16, FPC No. 35, Supplement No. 1.	
Community Public Service Co., Fort Worth, Texas.	FPC No. 17, Supplement No. 1.	
Bailey County Electric Cooperative, Inc., Muleshoe, Texas.	FPC No. 18	FPC No. 36.
Swisher County Electric Cooperative, Inc., Tulia, Texas.	FPC No. 19, Supplement No. 1.	FPC No. 47,[1] Supplement No. 1.
Central Valley Electric Cooperative, Inc., Artesia, New Mexico.	FPC No. 20	FPC No. 37.
Tri-County Electric Cooperative, Inc., Hooker, Oklahoma.	FPC No. 21	FPC No. 52.
South Plains Electric Cooperative, Inc., Lubbock, Texas.	FPC No. 22, Supplement No. 1.	FPC No. 46.
Roosevelt County Electric Cooperative, Inc., Portales, New Mexico.	FPC No. 23	FPC No. 45.
Rita Blanca Electric Cooperative, Inc., Dalhart, Texas.	FPC No. 24	FPC No. 48.
North Plains Electric Cooperative, Inc., Perryton, Texas.	FPC No. 25	FPC No. 49.
North Fork Electric Cooperative, Inc., Sayre, Oklahoma.	FPC No. 26	FPC No. 44.
Lyntegar Electric Cooperative, Inc., Tahoka, Texas.	FPC No. 27	FPC No. 43.
Lighthouse Electric Cooperative, Inc., Floydada, Texas.	FPC No. 28, Supplement No. 1.	FPC No. 40,[2] Supplement No. 1.
Lamb County Electric Cooperative, Inc., Littlefield, Texas.	FPC No. 29, Supplement No. 1.	FPC No. 42.
Greenbelt Electric Cooperative, Inc., Wellington, Texas.	FPC No. 30	FPC No. 41.
Farmers Electric Cooperative, Inc. of New Mexico, Clovis, New Mexico.	FPC No. 31	FPC No. 39.
Deaf Smith County Electric Cooperative, Inc., Hereford, Texas.	FPC No. 32	FPC No. 38.
Pioneer Cooperative Association, Inc., Ulysses, Kansas.[3]	FPC No. 33	

---

[1] Supplement No. 1 to FPC No. 47 is a redesignation of an existing rate schedule providing for facility construction and wheeling arrangements. (Supplement No. 1 to FPC No. 19.)

[2] Supplement No. 1 to FPC No. 40 embodies an agreement dated December 12, 1961 covering operational practices and facility payments by Southwestern to Lighthouse which Southwestern appears to regard as related to its power supply agreement with Lighthouse dated November 27, 1961, designated as Rate Schedule FPC No. 40. The two agreements were submitted for filing concurrently.

[3] With the exception of Rate Schedule FPC No. 33, all of Southwestern's effective and proposed rate schedules embody written contractual agreements between Company and the respective customers and provide for all requirements electric service or supplemental electric service. Rate Schedule FPC No. 33 provides for the rendition of emergency service only.

APPENDIX B

Docket No. E-7038

SOUTHWESTERN PUBLIC SERVICE COMPANY

Summary cost of service

Line No.	Description	Total	Wholesale Service		Retail Service
			REC	Private Utilities	
	(1)	(2)	(3)	(4)	(5)
1	Power production expenses:				
2	Power supply	$12,152,992	$1,972,284	$695,374	$9,485,334
3	Specific	163	63	100	------------
4	Total	12,153,155	1,972,347	695,474	9,485,334
5	Transmission expenses:				
6	Power supply	614,242	114,587	32,585	467,070
7	Specific	198,019	7,202	7,878	182,939
8	Total	812,261	121,789	40,463	650,009
9	Distribution expenses:				
10	Power supply	13,886	2,591	737	10,558
11	Specific	3,488,459	12,992	1,118	3,474,349
12	Total	3,502,345	15,583	1,855	3,484,907
13	Customers accounting expenses:				
14	Specific	1,412,777	8,920	945	1,402,912
15	Sales expenses:				
16	Specific	1,333,106	------------	------------	1,333,106
17	Administrative and general expenses:				
18	Power supply	1,549,069	288,979	82,178	1,177,912
19	Specific	2,417,621	10,966	3,773	2,402,882
20	Total	3,966,690	299,945	85,951	3,580,794
21	Total operating expenses	23,180,334	2,418,584	824,688	19,937,062
22	Depreciation expense:				
23	Power supply	3,683,579	687,172	195,413	2,800,994
24	Specific	2,847,503	15,719	12,722	2,819,062
25	Total	6,531,082	702,891	208,135	5,620,056
26	Taxes other than income:				
27	Power supply	1,413,942	263,771	75,010	1,075,161
28	Specific	2,473,085	6,483	5,168	2,461,434
29	Total	3,887,027	270,254	80,178	3,536,595
30	Federal income tax:				
31	Power supply	1,235,290	230,443	65,532	939,315
32	Specific	998,220	6,434	5,131	986,655
33	Total	2,233,510	236,877	70,663	1,925,970
1	Credits for tax deferred in prior years:				
2	Power supply	(647,314)	(120,757)	(34,340)	(492,217)
3	Specific	(44,672)	(257)	(211)	(44,204)
4	Total	(691,986)	(121,014)	(34,551)	(536,421)
5	State income taxes:				
6	Power supply	7,165	1,335	380	5,450
7	Specific	5,789	37	30	5,722
8	Total	12.954	1,372	410	11,172
9	Miscellaneous operating revenues:				
10	Power supply	(3,300)	(616)	(175)	(2,509)
11	Specific	(93,759)	------------	------------	(93,759)
12	Total	(97,059)	(616)	(175)	(96,268)
13	Return at 5.55 percent:				
14	Power supply	6,674,964	1,245,215	354,107	5,075,642
15	Specific	5,393,951	34,766	27,726	5,331,459
16	Total	12,068,915	1,279.981	381,833	10,407,101
17	Total cost of service	47,124,777	4,788,329	1,531,181	40,805,267

APPENDIX C

Docket No. E-7038

SOUTHWESTERN PUBLIC SERVICE COMPANY

Wholesale for resale-electric operations—summary of earnings—pro forma with revenues from REC customers at present rates, 12 months ended Dec. 31, 1962

Description	Adjusted electric utility Dec. 31, 1961	Adjusted electric utility Dec. 31, 1962	Assigned and allocated to—		
			Total firm wholesale	RECs	Private companies
Operating revenues			$6, 953, 313	$4, 816, 217	$2, 137, 096
Operating expenses:					
Power production			2, 678, 596	1, 991, 921	686, 675
Transmission			183, 113	155, 256	27, 857
Distribution			18, 905	17, 601	1, 304
Customer accounts			9, 773	8, 835	938
Sales					
Administrative and general			398, 297	320, 688	77, 609
Total operating and maintenance expenses			3, 288, 684	2, 494, 301	794, 383
Depreciation and amortization expense			978, 373	794, 668	183, 705
Taxes other than income taxes			397, 724	313, 518	84, 206
Income taxes—Federal			507, 016	76, 867	430, 149
Income taxes—State			3, 183	804	2, 379
Total operating expenses			5, 174, 980	3, 680, 158	1, 494, 822
Operating income			1, 778, 333	1, 136, 059	642, 274
Rate base averaged for 1961–62:					
Net plant in service:					
Book plant in service	$41, 418, 481	$45, 385, 791	43, 402, 136	35, 302, 788	8, 099, 348
Accumulated provision for depreciation and amortization	7, 154, 290	8, 012, 872	7, 583, 581	6, 154, 909	1, 428, 672
Net book plant in service	34, 264, 191	37, 372, 919	35, 818, 555	29, 147, 879	6, 670, 676
In service but booked as construction work in progress	29, 331	41, 201	35, 266	30, 923	4, 343
Adjusted net plant in service	34, 293, 522	37, 414, 120	35, 853, 821	29, 178, 802	6, 675, 019
Less contributions in aid of construction	73, 983	76, 531	75, 257	32, 371	42, 886
Plus materials and supplies	153, 948	153, 948	153, 948	126, 397	27, 551
Total rate base averaged for 1961–62	34, 373, 487	37, 491, 537	35, 932, 512	29, 272, 828	6, 659, 684
Operating income as per cent of rate base			4. 95	3. 88	9. 64

APPENDIX D

Docket No. E-7038

SOUTHWESTERN PUBLIC SERVICE COMPANY

Wholesale for resale-electric operations—summary of earnings—pro forma with revenues from REC customers at proposed rates, 12 months ended Dec. 31, 1962

Description	Adjusted electric utility Dec. 31, 1961	Adjusted electric utility Dec. 31, 1962	Assigned and allocated to—		
			Total firm wholesale	REC's	Private companies
Operating revenues			$6,851,149	$4,714,053	$2,137,096
Operating expenses:					
Power production			2,678,596	1,991,921	686,675
Transmission			183,113	155,256	27,857
Distribution			18,905	17,601	1,304
Customer accounts			9,773	8,835	938
Sales					
Administrative and general			398,297	320,688	77,609
Total operating and maintenance expenses			3,288,684	2,494,301	794,383
Depreciation and amortization expense			978,373	794,668	183,705
Taxes other than income taxes			397,724	313,518	84,206
Income taxes—Federal			454,131	23,981	430,150
Income taxes—State			2,897	523	2,374
Total operating expenses					
Operating income			1,729,340	1,087,062	642,278
Rate base averaged for 1961–62:					
Net plant in service:					
Book plant in service	$41,418,481	$45,385,791	43,402,136	35,302,788	8,099,348
Accumulated provision for depreciation and amortization	7,154,290	8,012,872	7,583,581	6,154,909	1,428,672
Net book plant in service	34,264,191	37,372,919	35,818,555	29,147,879	6,670,676
In service but booked as construction work in progress	29,331	41,201	35,266	30,923	4,343
Adjusted net plant in service	34,293,522	37,414,120	35,853,821	29,178,802	6,675,019
Less contributions in aid of construction	73,983	76,531	75,257	32,371	42,886
Plus materials and supplies	153,948	153,948	153,948	126,397	27,551
Total rate base averaged for 1961–62	34,373,487	37,491,537	35,932,512	29,272,828	6,659,684
Operating income as per cent of rate base			4.81	3.71	9.64

APPENDIX E

Docket No. E-7038

SOUTHWESTERN PUBLIC SERVICE COMPANY

Results obtained for test year 1962 after giving effect to Commission Opinion No. 417 and Revenue Act of 1964 at 48 percent tax rate

Line No.	Rate base	Total electric system	Others	Allocated to Wholesale Customers								
				Total	New Mexico Electric Service Co.	Community Public Service Co.	Cochran Power and Light Co.	Rural Electric cooperatives				
								At filed rates			At proposed rates	
								Total	Others	Lea County		
1	Rate base (Exh. 72-C, Sch. 3B, lines 3 and 28).	230, 022, 233	192, 065, 975	37, 956, 258	4, 826, 771	1, 297, 367	575, 860	31, 256, 260	30, 031, 512	1, 224, 748	31, 256, 260	
2	Accumulated deferred income taxes—liberalized depreciation.	(2, 263, 293)										
3	Changes in income tax credit to working capital.	489, 164										
4	Adjusted rate base	228, 248, 104	190, 587, 167	37, 660, 937	4, 793, 210	1, 278, 190	570, 620	31, 018, 917	29, 809, 202	1, 209, 715	31, 018, 917	
5	Percent	100. 00	83. 50	16. 50	2. 10	0. 56	0. 25	13. 59	13. 06	0. 53		
7	Cost of service:											
8	Total expenses (Exh. 72, Sch. 4, line 33).	33, 427, 890										
9	Changes in gross receipts tax adjustment.	(33, 194)										
10	Adjusted expenses (Exh. 72-C, Sch. 2B, line 34).	33, 394, 696	28, 740, 041	4, 654, 655	871, 382	180, 747	61, 438	3, 541, 088	3, 437, 371	103, 717		
11	State income tax allowable.	22, 822	19, 056	3, 766	479	128	57	3, 102	2, 981	121		On basis of line 5.
12	Federal income tax allowable.	3, 963, 170	3, 309, 247	653, 923	83, 226	22, 194	9, 908	538, 595	517, 590	21, 005		Do.
13	Return—6.00 percent of line 4.	13, 694, 886	11, 435, 230	2, 259, 656	287, 593	76, 691	34, 237	1, 861, 135	1, 788, 552	72, 183		

APPENDIX E—Continued

SOUTHWESTERN PUBLIC SERVICE COMPANY—Continued

Line No.	Rate base	Total electric system	Others	Allocated to Wholesale Customers								
				Total	New Mexico Electric Service Co.	Community Public Service Co.	Cochran Power and Light Co.	Rural Electric cooperatives				
								At filed rates			At proposed rates	
								Total	Others	Lea County		
14	Adjusted Cost of Service.	51, 075, 574	43, 503, 574	7, 572, 000	1, 242, 680	279, 760	105, 640	5, 943, 920	5, 746, 494	197, 426	5, 943, 920	
15												
16												
17	Realized Rate of Return:											
18												
19	Net income before Federal income tax (Exh. 72-C, Sch. 2B, line 20).	27, 491, 121	25, 204, 056	2, 287, 065	795, 895	177, 472	43, 292	1, 270, 406	1, 233, 461	36, 945	1, 168, 346	
20	Additional deductions (Exh. 72-C, Sch. 2B, line 21).	8, 886, 975	7, 420, 624	1, 466, 351	186, 627	49, 767	22, 217	1, 207, 740	1, 170, 795	36, 945	1, 207, 740	On basis of line 5.
21	Taxable income	18, 604, 146	17, 783, 432	820, 714	609, 268	127, 705	21, 075	62, 666	62, 666		(39, 394)	
22												
23	48 percent of line 21	8, 929, 990	8, 536, 047	393, 943	292, 449	61, 298	10, 116	30, 080	30, 080			
24	Surtax exemption	(6, 500)	(6, 213)	(287)	(213)	(45)	(7)	(22)	(22)			On basis of line 23.
25	3 percent investment tax credit.	(552, 696)	(528, 314)	(24, 382)	(18, 100)	(3, 794)	(626)	(1, 862)	(1, 862)			Do.
26	Deferred income taxes (accelerated amortization).	(260, 487)	(217, 507)	(42, 980)	(5, 470)	(1, 459)	(651)	(35, 400)	(34, 020)	(1, 380)	(35, 400)	On basis of line 5.
27	Federal income tax	8, 110, 307	7, 784, 013	326, 294	268, 666	56, 000	8, 832	(7, 204)	(5, 824)	(1, 380)	(35, 400)	
28												
29	Net income after income taxes (line 19 minus line 27).	19, 380, 814	17, 420, 043	1, 960, 771	527, 229	121, 472	34, 460	1, 277, 610	1, 239, 285	38, 325	1, 203, 746	

30 31	Realized rate of return (line 29 divided by line 4) (percent).	8.49	9.14	5.21	11.00	9.50	6.04	4.12	4.16	3.17	3.88
32 33 34 35	Excess Revenues:										
36 37	Operating revenues (Exh. 72-C, Sch. 1B, line 12).	61,145,015	54,191,702	6,953,313	1,674,147	358,219	104,730	4,816,217	4,675,555	140,662	4,714,054
38	Excess revenue (line 37 minus line 14).	10,069,441	10,688,128	590,926	431,467	78,495					
39	Revenue deficiency (line 37 minus line 14).			1,128,613			910	1,127,703	1,070,939	56,764	1,229,866

APPENDIX F

Docket No. E-7038

SOUTHWESTERN PUBLIC SERVICE COMPANY

Rate of return studies Dec. 31, 1962

	Amount	Percent of capitalization	Cost	Weighted cost
Staff (see page 45 of brief):			*Percent*	*Percent*
Long term debt	$140,257,000	53.62	×3.58	=1.92
Preferred stock	27,420,000	10.48	×4.68	=0.49
Accumulated deferred: Income taxes	12,501,370	4.78	×1.50	=0.07
Common equity	81,400,843	31.12	×11.31	=3.52
Total	261,579,213	100.00		6.00
Southwestern:				
Long term debt	140,257,000	56.00	[1] ×3.87	=2.17
Preferred stock	27,420,000	11.00	×4.63	=0.51
Common equity	81,400,843	33.00	×14.75	=4.87
Total	249,077,843	100.00		7.55
Rounded to				7.50
Southwestern:				
Long term debt	140,257,000	56.00	×3.87	=2.17
Preferred stock	27,420,000	11.00	×4.63	=0.51
Common equity	81,400,843	33.00	×16.00	=5.28
Total	249,077,843	100.00		7.96
Rounded to				8.00
Cooperatives (page 36 of brief):				
Long term debt	140,257,000	56.31	×3.58	=2.016
Preferred stock	27,420,000	11.01	×4.68	=0.515
Common equity	81,400,843	32.68	×9.00	=2.941
Total	249,077,843	100.00		5.472
Rounded to				5.5

[1] Differences in percent of capitalization as shown for Southwestern and cooperatives are due to "rounding off" of percentages by Southwestern. (See Southwestern's brief, p. 104).

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

GLAMORGAN PIPE & FOUNDRY CO., PROJECT NO. 2358

ORDER ISSUING LICENSE (MINOR)

(Issued March 3, 1965)

Application was filed on April 10, 1963 by Glamorgan Pipe & Foundry Co. (Applicant) of Lynchburg, Virginia, for a license under Section 4(e) of the Federal Power Act (Act) for constructed minor Project No. 2358, located on the City of Lynchburg, Virginia, water works canal which takes water from the James River and discharges water back into the James River at a point downstream.

According to the application, the project was constructed prior to 1913 and has been in continuous operation since that date. There have been no major changes in the project works since its construction. No lands of the United States are affected by the project.

The Secretary of the Army and the Corps of Engineers, have advised that the plans of the project structures affecting navigation are satisfactory insofar as the interests of navigation are concerned.

The Department of the Interior, in reporting on the application, did not recommend any conditions for inclusion in any license for the project, in the interests of the Department.

The Department of Health, Education, and Welfare has advised that there is no indication that the project has any adverse effect on the water supply of the City of Lynchburg, and it is not anticipated that any adverse effects on water quality or vector control will arise.

While invited to do so, the Commission of Game and Inland Fisheries, Commonwealth of Virginia, has not reported on the application.

In our order on rehearing issued February 17, 1965, in *Wisconsin Power & Light Company, Project No. 2347, et al.*, 33 FPC 275, we stated that we would have no objection to the issuance of licenses for minor projects without waiving Sections 14 and 15 of the Federal Power Act and the other provisions of the Act necessary to the effectuation of those sections, provided the minor project applications are timely supplemented pursuant to Section 4.50 of our Regulations under the Act (18 CFR § 4.50), which relates to applications for major projects. In the event the Applicant herein wishes a license in which those provisions of the Act are not waived it should so advise us within 30 days from the date of issuance of this order and file its supplemental application within 30 additional days thereafter.

In its order issued August 12, 1964, 32 FPC 591, for Project No. 2376, the Commission found that the James River from its mouth at Newport News, at least to its confluence with Jackson's River at mile 340 is a navigable waterway of the United States. Project No. 2358 is situated in the City of Lynchburg on the James River at approximately mile 252. For the reasons set forth in our Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of April 1, 1962, and a termination date of December 31, 1993.

The Commission finds:

(1) Applicant is a corporation organized under the laws of the Commonwealth of Virginia, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(2) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(3) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(4) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(5) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 200 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(6) It will be in the public interest to waive pursuant to Section 10(i) of the Act the terms and conditions contained in the following sections of Part I of the Act:

Section 4(b), except the second sentence thereof 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 14, except insofar as the power of condemnation is reserved: 15; 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

The Commission orders:

(A) This license is hereby issued to Glamorgan Pipe & Foundry Co. (Licensee) of Lynchburg, Virginia, under Sections 4(e) and 10(i) of the Act, for a period effective as of April 1, 1962 and terminating December 31, 1993, for the continued operation and maintenance of Project No. 2358, located on the City of Lynchburg water works canal, which takes water from the James River, a navigable water of the United States, subject to the terms and conditions of the Act insofar as not expressly waived herein, which Act is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed thereunder.

(B) Constructed Project No. 2358 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined;

(ii) project works consisting of: an 8-foot diameter metal flume, 70 feet long; a reinforced concrete flume intake structure in the City of Lynchburg water works canal; a power plant (24 feet x 40 feet-9 inches in plan and approximately 18 feet deep) composed of a reinforced concrete hydro intake pit which is open at the top and which contains one turbine (rated at 250 hp at a 13.5 feet head) connected to a generator (150 KW-DC) which is mounted in an adjacent reinforced concrete pit which contains all appurtenant facilities and over which a metal shed has been erected.

(iii) all other structures, fixtures, equipment, or facilities which are located in the project area and are used or useful in the maintenance and operation of the project; all rights and interests the possession of which are necessary or appropriate to the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-9 (July 1, 1964) entitled, "Terms and Conditions of License for Constructed Minor Project Affecting Navigable Waters of the United States" (32 FPC 577), which terms and conditions, designated as Articles 1 through 11, are attached hereto and made a part hereof, and subject to the following special condition set forth herein as an additional article:

Article 12. The Licensee shall pay to the United States the following annual charge; effective April 1, 1962:

(i) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, $10.00.

(D) The terms and conditions of the Act which it has been found above to be in the public interest to waive, are hereby eliminated from this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

HAMMERMILL PAPER COMPANY, PROJECT NO. 2374

ORDER ISSUING LICENSE (MINOR)

(Issued March 3, 1965)

Application was filed on May 31, 1963 by Hammermill Paper Company (Applicant) of Erie, Pennsylvania, under section 4(e) of the Federal Power Act (Act) for a license for constructed Project No. 2374, located on the Paw Paw River in the City of Watervliet, in the County of Berrien, Michigan. No lands of the United States are affected by the project.

According to the application, the project is over 100 years old, with the dam being constructed in 1849 and the generating unit being installed and placed in operation in 1941.

St. Joseph Harbor, formed by the junction of the St. Joseph and Paw Paw Rivers, has been improved for navigation. The Villages of Lawrence and Paw Paw, upstream from Project No. 2374 on the Paw Paw River, were served by flatboats in 1840. "The Landing" near the Village of Lawrence came to be a place where considerable freight was received for shipment down the river.

The Secretary of the Army and the Chief of Engineers have advised that the plans of the project structures affecting navigation are satisfactory insofar as the interests of navigation are concerned.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project certain terms and conditions in the interests of fish and wildlife and free public access usually included in licenses for projects of the type herein under consideration.

The Department of Health, Education and Welfare has reported that the project does not significantly affect water supply or water control quality, nor is it expected that the granting of a license for the project will create or intensify vector problems.

The Michigan Department of Conservation offers no objection to the granting of a license for the project.

In our order on rehearing issued February 17, 1965, in *Wisconsin Power & Light Company, Project No. 2347, et al.*, 33 FPC 275, we stated that we would have no objection to the issuance of licenses for minor projects without waiving Sections 14 and 15 of the Federal Power Act and the other provisions of the Act necessary to the effectuation of those sections, provided the minor project applications are timely supplemented pursuant to Section 4.50 of our Regulations under the Act (18 CFR § 4.50), which relates to applications for major projects. In the event the Applicant herein wishes a license in which those provisions of the Act are not waived it should so advise us within 30 days from the date of issuance of this order and file its supplemental application within 30 additional days thereafter.

For the reasons set forth in our April 25, 1962 Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of January 1, 1941 and a termination date of December 31, 1990.

The Commission finds:

(1) The Paw Paw River is a navigable water of the United States from its mouth at least to the village of Paw Paw at mile 60.

(2) Applicant is a corporation organized under the laws of the State of Pennsylvania, and has submitted satisfactory evidence of compliance with the

requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 400 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(7) It will be in the public interest to waive pursuant to Section 10(i) of the Act the terms and conditions contained in the following sections of Part I of the Act:

Section 4(b), except the second sentence thereof; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 14, except insofar as the power of condemnation is reserved; 15; 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

The Commission orders:

(A) This license is hereby issued to Hammermill Paper Company (Licensee) of Erie, Pennsylvania, under sections 4(e) and 10(i) of the Federal Power Act (Act) for a period effective as of January 1, 1941 and terminating December 31, 1990, for the continued operation and maintenance of constructed minor Project No. 2374, located on the Paw Paw River, a navigable water of the United States, in Berrien County, Michigan, subject to the terms and conditions of the Act insofar as not expressly waived herein, which Act is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2374 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined; and

(ii) a concrete dam about 8 feet high and 86 feet long surmounted with wooden flashboards two feet high on steel ways located about 2,000 feet upstream from the Licensee's mill; a head-race channel extending from the dam to the mill with a small forebay pond; a concrete spillway located on the head-race channel about 500 feet upstream from the mill; a rack house or intake; two steel flumes; a small powerhouse with one 446-horsepower turbine connected to a 375-kva generator; and all other structures, fixtures, equipment or facilities used or useful in the operation and maintenance of the project and located on the project area; and all rights and interests therein, the possession of which is necessary in the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-9 (July 1, 1964) entitled "Terms and Conditions of License for Constructed

Minor Project Affecting Navigable Waters of the United States (32 FPC 577), which terms and conditions, designated as Articles 1 through 11, are attached hereto and made a part hereof; and subject to the following special condition set forth herein as an additional article:

Article 12. For the purpose of reimbursing the United States for the costs of administration of Part I of the Act the Licensee shall pay to the United States for the period January 1, 1941 through March 31, 1962 an annual charge of $5.00, and effective April 1, 1962 an annual charge of $20.00.

(D) The terms and conditions of the Act, which it has been found herein to be in the public interest to waive, are hereby excluded from this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

JACK VANDELAAR AND DOROTHY A. VANDELAAR, DOING BUSINESS AS PANAMINT SPRINGS RESORT, PROJECT NO. 1764

ORDER ISSUING NEW LICENSE (MINOR)

(Issued March 3, 1965)

Application was filed on July 29, 1963, and supplemented on December 16, 1963 by Jack Vandelaar and Dorothy A. Vandelaar (Applicants) doing business as Panamint Springs Resort, of Lone Pine, California, for a new license under the Federal Power Act for constructed Project No. 1764, located on Darwin Wash, in Inyo County, California, and affecting lands of the United States.

The Department of the Interior, in reporting on the application, has advised that the effects of the project on wildlife resources are insignificant and no protective measures in the interest of fish and wildlife resources are considered necessary for inclusion in any new license for the project.

The Department of Health, Education, and Welfare has reported that the project does not cause any water supply, water pollution, or vector problems.

Although invited to do so, no report on the application has been received from the Department of Fish and Game of the State of California.

In our order on rehearing issued February 17, 1965, in *Wisconsin Power & Light Company, Project No. 2347, et al.*, 33 FPC 275, we stated that we would have no objection to the issuance of licenses for minor projects without waiving Sections 14 and 15 of the Federal Power Act and the other provisions of the Act necessary to the effectuation of those sections, provided the minor project applications are timely supplemented pursuant to Section 4.50 of our Regulations under the Act (18 CFR § 4.50), which relates to applications for major projects. In the event the Applicant herein wishes a license in which those provisions of the Act are not waived it should so advise us within 30 days from the date of issuance of this order and file its supplemental application within 30 additional days thereafter.

Annual charges under the last license have been paid through March 25, 1963, the date upon which that license expired.

The Commission finds:

(1) Applicants are citizens of the United States and have submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(2) Public notice of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(3) The project does not affect a Government dam, nor will the issuance of a new license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(4) The issuance of a new license for the project will not interfere or be inconsistent with any reservation or withdrawal of public lands.

(5) The amount of annual charges to be paid under the new license for reimbursing the United States for the costs of administration of Part I of the Act, and for recompensing it for the use, occupancy and enjoyment of its lands by the project (10.9 acres) is reasonable as hereinafter fixed and specified.

(6) It will be in the public interest to waive pursuant to Section 10(i) of the Act the terms and conditions contained in the following sections of Part I of the Act:

Section 4(b), except the second sentence thereof; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f), 11; 12; 14, except insofar as the power of condemnation is reserved; 15; 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

(7) The exhibits redesignated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of the new license for the project.

The Commission orders:

(A) This new license is hereby issued under Sections 4(e) and 10(i) of the Federal Power Act (Act) to Jack Vandelaar and Dorothy A. Vandelaar (Licensees) doing business as Panamint Springs Resort, for a period of 10 years, effective as of March 26, 1963, for the continued operation and maintenance of minor Project No. 1764, located on Darwin Wash, Inyo County, California, and affecting lands of the United States, subject to the terms and conditions of the Act insofar as not expressly waived herein, which Act is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 1764 consists of:

(i) all lands constituting the project area, the limits of which are 10 feet on each side of the points of diversion, pipe lines, powerhouse and 110-volt power line;

(ii) project structures, comprising a small collecting flume and box located at Lower Darwin Falls, a steel pipe line about 4.5 miles long, a powerhouse having installed capacity of 13 horsepower, and a short length of low-voltage electric power line; and

(iii) all other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, and all rights, and interests the possession of which is necessary or appropriate in the maintenance and operation of the project.

the said lands and project works being more specifically shown and described by Exhibits "F" and "G" filed with the application for new license, which exhibits are redesignated and described as follows:

Exhibit K: (FPC No. 1764–1) Map in one sheet entitled "Power Project of W. A. Reid and Franklin Booth, Panamint Springs, Inyo County, California", (Revised May 17, 1957) signed on August 8, 1940, by W. A. Reid and Franklin Booth;

Exhibit M: Specifications in one typewritten sheet entitled "General Description of Mechanical, Electrical and Transmission Equipment" signed on August 8, 1940 by Franklin Booth and William A. Reid.

(C) This license is also subject to the terms and conditions set forth in Form L–7, December 15, 1953, entitled "Terms and Conditions of License for Minor Project Affecting Lands of the United States" (17 FPC 486), which terms and conditions, designated as Articles 1 through 14, are attached hereto and made a part hereof; and subject to the following special condition set forth herein as an additional article:

Article 15. The Licensees shall pay to the United States the following annual charges, effective as of March 26, 1963.

(i) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, $5.00; and

(ii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands, $13.08.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of this new license.

(E) The terms and conditions of the Act, which it has been found above to be in the public interest to waive, are hereby excluded from this license.

(F) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed by the Licensees and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

ALPENA POWER COMPANY, PROJECT NO. 2419

ORDER ISSUING LICENSE (MINOR)

(Issued March 4, 1965)

Application was filed on October 11, 1963 by Alpena Power Company (Applicant) of Alpena, Michigan, for a license under Section 4(e) of the Federal Power Act (Act) for constructed Project No. 2419, known as Hillman Dam, located on Thunder Bay River, in the Village of Hillman, Montmorency County, Michigan. The project does not affect lands of the United States.

According to the application, the original project dam was built about 1895 creating a small pond to provide power for a grist mill. In 1907 a 50 kw hydroelectric generator was installed but was replaced in 1947 by the presently installed 250 kw unit. In December, 1956, Applicant purchased the project consisting of a dam, powerhouse and all franchises and permits from the Hillman Light and Power Company.

The Thunder Bay River with its tributaries, North Branch and Upper and Lower South Branches form one of the larger river systems in Michigan. It is located in the northerly portion of the South Peninsula and rises in Montmorency County whence it flows northerly and easterly to Thunder Bay, an arm of Lake Huron, entering at the City of Alpena. Alpena Harbor has been under improvement and maintenance as a continuing project by the Federal Government since 1876 and has a navigable depth of some 16 feet through a dredged channel varying from 100 to 200 feet wide for a distance of somewhat less than a mile up the Thunder Bay River. The drainage area herein involved was formerly heavily timbered with Michigan pine. There is ample historical evidence of logs having been floated down the tributaries of the Thunder Bay River and down the latter stream to the various mills in Alpena at its mouth. For example, in 1867, an estimated total of 51,579,175 feet of logs were floated down Thunder Bay River and its tributaries. The river was also used for the transporting of shingles, lath, telephone poles and railroad ties made from timber located on Thunder Bay River and its tributaries.

The Department of the Army and the Chief of Engineers have reported that the plans of the project structures affecting navigation are satisfactory insofar as the interests of navigation are concerned.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project the terms and conditions in the interests of fish and wildlife resources and recreation usually included in licenses for projects of the type herein under consideration.

The Department of Health, Education, and Welfare has advised that there does not appear to be any serious pollution condition caused by the operation of the project dam.

In our order on rehearing issued February 17, 1965, in *Wisconsin Power & Light Company, Project No. 2347, et al.*, 33 FPC 275, we stated that we would have no objection to the issuance of licenses for minor projects without waiving Sections 14 and 15 of the Federal Power Act and the other provisions of the Act necessary to the effectuation of those sections, provided the minor project applications are timely supplemented pursuant to section 4.50 of our Regulations under the Act (18 CFR § 4.50), which relates to applications for major projects. In the event the Applicant herein wishes a license in which those provisions of the Act are not waived it should so advise us within 30 days from the date of issuance of this order and file its supplemental application within 30 additional days thereafter.

The Michigan Department of Conservation has advised that: there are no significant fish and wildlife problems involved in the operation of the project; the stream flow and water management have not impaired fishery values; and the public is permitted to use the waters of the 160 acre impoundment behind the project dam (located within the village limits of Hillman), and the village provides a park and public boat access site.

The Commission finds:

(1) Thunder Bay River and its tributaries, North Branch and Upper and Lower South Branches are navigable waters of the United States.

(2) Applicant is a corporation organized under the laws of the State of Michigan, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 330 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(7) It will be in the public interest to waive pursuant to section 10(i) of the Act the terms and conditions contained in the following sections of Part I of the Act:

Section 4(b), except the second sentence thereof; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 14, except insofar as the power of condemnation is reserved; 15; 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

The Commission orders:

(A) This license is hereby issued to Alpena Power Company (Licensee) of Alpena, Michigan, under Sections 4(e) and 10(i) of the Federal Power Act (Act) for a period effective as of January 1, 1947, and terminating December 31, 1993, for the continued operation and maintenance of the Hillman Dam Project No. 2419, located on the Thunder Bay River, a navigable water of the United States, subject to the terms and conditions of the Act insofar as not expressly waived herein, which Act is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2419 consists of:

(i) all lands constituting the project area and enclosed by the project boundaries or the limits of which are otherwise defined;

(ii) project works comprising: (1) a reinforced concrete and earth-fill dam with concrete wing walls extending upstream, the concrete portions of the dam, about 15 feet high and totalling about 127 feet in length, include (a) a spill gate section about 37 feet long (with 3 plank needle gates with total gate opening about 28 feet long); (b) a spill gate section with two openings totalling about 17 feet long; and (c) a gated powerhouse intake section having two steel gates, each about 8 feet 7 inches wide and 13 feet high; (2) a pond about 160 acres in area with maximum storage capacity of about 500 acre-feet; (3) a powerhouse containing 250 kw installed generating capacity; and (4) appurtenant facilities;

(iii) all of the structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-9 (July 1, 1964) entitled "Terms and Conditions of License for Constructed Minor Project Affecting Navigable Waters of the United States" (32 FPC 577), which terms and conditions, designated as Articles 1 through 11, are attached hereto and made a part hereof; and subject to the following special condition set forth herein as an additional article:

Article 12. The Licensee shall pay to the United States the following annual charge:

(i) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act for the period January 1, 1947, through March 31, 1962, an annual charge of $5.00, and effective April 1, 1962, an annual charge of $16.50.

(D) The terms and conditions of the Act, which it has been found above to be in the public interest to waive, are hereby excluded from this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313 (a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

VANCEBURG ELECTRIC LIGHT, HEAT AND POWER SYSTEM v. KENTUCKY POWER COMPANY AND AMERICAN ELECTRIC POWER COMPANY, INC., DOCKET NO. E-7184

ORDER PROVIDING FOR HEARING AND DENYING MOTION TO DISMISS COMPLAINT

(Issued March 4, 1965)*

This order directs a hearing on issues raised in a complaint filed by the Vanceburg Electric Light, Heat and Power System (Vanceburg), Vanceburg, Kentucky, against the Kentucky Power Company, Ashland, Kentucky (Kentucky Power) and its parent corporation, American Electric Power Company, Inc., New York, New York (AEP). The complaint was filed on October 1, 1964. An answer to the complaint and motion to dismiss was filed by Kentucky Power and AEP on December 31, 1964. This order denies the motion to dismiss of Kentucky Power and AEP.

Vanceburg complains that Kentucky Power's existing rates to it for wholesale electric service are unjust, unreasonable, discriminatory and therefore unlawful within the meaning of Sections 205 and 206 of the Federal Power Act. It seeks reasonable rates and elimination of alleged discrimination or, in the alternative, an order making possible its substitution of service from the Fleming-Mason Rural Electric Cooperative, Flemingsburg, Kentucky (Fleming-Mason), in lieu of service from Kentucky Power. Vanceburg's complaint indicates that Fleming-Mason does not object to rendering, voluntarily, the requested service to the City. Accompanying the complaint is a written undertaking by Fleming-Mason dated August 16, 1963, expressing willingness to serve Vanceburg upon the receipt of appropriate authorization to do so (presumably from the Kentucky Commission

---

*See order re reconsideration issued March 29, 1965, *infra*, p. 654.

and/or the Rural Electrification Administration). Apparently, for that reason Vanceburg's complaint and Kentucky Power's and AEP's Answer and motion to dismiss the complaint were not served upon Fleming-Mason. As indicated hereafter, we are directing that this be done.

Vanceburg presently receives electric service from Kentucky Power under Kentucky Power's rate schedule MLP which was attached to the complaint. Kentucky Power also serves the City of Olive Hill, Kentucky, and the Big Sandy Rural Electric Cooperative. None of these rate schedules are presently on file with this Commission.[1]

Numerous underlying issues concerning the reasonableness of Kentucky Power's rates to its three wholesale customers, the allegation of discrimination among those customers, the alternative request for an order making possible service to Vanceburg from Fleming-Mason, the jurisdiction of this Commission over Kentucky Power's wholesale electric service, and the appropriate terms and conditions for service by Kentucky Power to Vanceburg make it necessary to direct a hearing on questions raised in the complaint and answer, and to deny the motion to dismiss, without prejudice to its being renewed at the conclusion of the hearing. We recognize that AEP is a holding company subject to regulation by the Securities and Exchange Commission and as such is not properly classifiable as a "public utility" within the meaning of the Federal Power Act. Retention of that Company as a nominal party to this proceeding will serve procedural purposes only. Section 301 of the Federal Power Act extends the investigatory and fact finding jurisdiction of the Commission to "the books, accounts, memoranda, and records of any person who controls, directly or indirectly, a licensee or public utility subject to the jurisdiction of the Commission, and of any other company controlled by such person, * * *".

The Commission further finds:

It is necessary and appropriate for the purposes of the Federal Power Act, particularly Sections 201, 202, 205, 206, 301, 306, 307, 308 and 309 thereof, that (1) a public hearing be held on the issues raised in the complaint, that (2) Fleming-Mason be offered an opportunity to become a party thereto, and (3) that Kentucky Power's and AEP's motion to dismiss be denied.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by the Federal Power Act, and pursuant to the Commission's Rules of Practice and Procedure, a public hearing shall be held commencing at 10 a.m. (EDST) May 24, 1965, in a hearing room of the Federal Power Commission, 441 G Street, N.W., Washington, D.C., on the matters set forth in the finding above.

(B) A prehearing conference shall be held before the presiding examiner commencing at 10 a.m. (EST), April 1, 1965, in a hearing room of the Federal Power Commission, 441 G Street, N.W., Washington, D.C., for purposes as specified in the Commission's Rules of Practice and Procedure.

(C) Copies of the complaint of Vanceburg, and Answer and Motion to Dismiss by Kentucky Power and AEP shall be served by the Commission's Secretary on Fleming-Mason.

---

[1] Kentucky and West Virginia Power Co., Inc., a predecessor of Kentucky Power and a member of the AEP System, formerly supplied Vanceburg, Olive Hill and Big Sandy Cooperative with wholesale electric service. That company did file its rate schedules for service to those three customers with this Commission. Kentucky and West Virginia Power Co., Inc., Rate Schedule FPC Nos. 5, 4 and 6 respectively.

(D) Kentucky Power and AEP are hereby directed, pursuant to the provisions of the Federal Power Act, particularly Sections 301, 306, 307, 308 and 309 thereof, to grant to the members of the staff of the Federal Power Commission during regular business hours free access to and opportunity to inspect and examine all facilities, properties, accounts, memoranda and other records of those Companies when requested so to do for the purposes of the hearing ordered herein.

(E) Notices of intervention and petitions to intervene in this proceeding may be filed with the Federal Power Commission, Washington, D.C., 20426 on or before March 30, 1965, and in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.37).

(F) The motion filed by Kentucky Power and AEP to dismiss the complaints filed by Vanceburg in the above-entitled proceeding is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

WESTERN MASSACHUSETTS ELECTRIC COMPANY, PROJECT NO. 2485

ORDER ISSUING PRELIMINARY PERMIT

(Issued March 4, 1965)

Application was filed on September 8, 1964, by Western Massachusetts Electric Company (Applicant) of West Springfield, Massachusetts, for a preliminary permit under Section 4(f) of the Federal Power Act (Act) for proposed Project No. 2485, known as the Northfield Mountain Pumped Storage Project, which would utilize Applicant's existing Turners Falls reservoir of Project No. 1889 as the lower pool of the proposed pumped storage project on the Connecticut River, a navigable water of the United States, in Franklin County, Massachusetts, about one mile north of the Village of Millers Falls.

The Secretary of the Army and the Chief of Engineers have advised that a study of the Connecticut River basin has been authorized by the Committee on Public Works of the United States Senate in a resolution approved on May 11, 1962, which directed a study and report respecting development of a comprehensive basin plan in the interests of flood control, navigation, hydroelectric power, water supply and other purposes, coordinated with related land resources. The study is a cooperative effort being accomplished under the primary direction of the Division Engineer, U.S. Army Engineer Division, New England, Waltham, Massachusetts, utilizing the combined services of specialists of the Federal and State agencies concerned with water resources development. To date, no substantial part of this study has been made in the Turner Falls reach of the river. The Department of the Army stated that Applicant should evaluate the effect of the proposed project on the Connecticut River stages, discharges, and flow regimen, and should coordinate its studies with the Division Engineer, Waltham, Massachusetts.

The Department of the Interior, in commenting on the application, recommended for inclusion in any preliminary permit for the project a condition for the protection, conservation and enhancement of fish and wildlife resources, and to mitigate and compensate for the loss of or damage to such resources.

The Department of Health, Education, and Welfare, in commenting on the application, recommended that any preliminary permit for the project should indicate therein the probable adverse effects on water quality and the need for adequate consideration of this aspect of the project during the planning stages.

An informal protest has been received from Mr. and Mrs. Ansel W. Siteman, of Montague City, Massachusetts, against the proposed use of Erving State Forest for the location of the upper pool of the proposed project. This is a matter which pertains to an application for license when and if one is filed rather than an application for preliminary which is before us here.

Applicant requests a preliminary permit for a period of 36 months. It appears appropriate, however, that the initial period of the permit should be 24 months as hereinafter provided.

No construction is authorized under a preliminary permit. Such a permit gives the permittee, during the period of the permit, the right of priority of application for license while the permittee undertakes the necessary studies and examinations required by Section 9 of the Federal Power Act in order to determine the economic feasibility of the proposed project, the means of securing the necessary financial arrangements for construction, the market for power, and all other information necessary for inclusion in an application for license, should one be applied for under the permit. A license would authorize construction of a project.

The issuance of a preliminary permit for Project No. 2485 as hereinafter provided shall not in any way be construed as precluding the exercise of Commission action contemplated under the provisions of Section 7(b) of the Federal Power Act.

The Commission finds:

(1) Applicant is a corporation organized under the laws of the State of Massachusetts.

(2) Public notice of the filing of the application has been given as required by the Act. Except for the informal protest mentioned above, no protests or petitions to intervene have been received. No conflicting application is before the Commission.

The Commission orders:

(A) This preliminary permit is hereby issued to Western Massachusetts Electric Company (Permittee) of West Springfield, Massachusetts, for a period of 24 months, effective as of February 1, 1965, for the sole purpose of maintaining priority of application for license for Project No. 2485, to be located on the Connecticut River in Franklin County, Massachusetts, about one mile north of the Village of Millers Falls, subject to the terms and conditions of the Act which is incorporated herein by reference as a part of this permit, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) The project, as tentatively proposed in the application, would consist of: (1) an artificial upper reservoir of about 14,000 acre-feet storage capacity, located on Northfield Mountain; (2) a penstock; (3) an underground powerhouse with a maximum capacity of 1,500,000 kilowatts in reversible pump-turbine generating units (minimum capacity presently under consideration is 450,000 kilowatts, using about 9,800 acre-feet of upper reservoir capacity); (4) a tailrace tunnel and canal; (5) an access tunnel; (6) Permittee's existing licensed Turners Falls (Project No. 1889) pond serving as the lower reservoir; and (7) appurtenant electrical and mechanical facilities.

(C) This permit is also subject to the terms and conditions set forth in Form P-1 entitled "Terms and Conditions of Preliminary Permit" (16 FPC 1303-1305) which terms and conditions, designated as Articles 1 through 8, are attached hereto and made a part hereof; and further subject to the following special conditions set forth herein as additional articles;

Article 9. The Permittee shall submit at the close of each six-month period from the effective date of this permit to the Regional Engineer, Federal Power Commission, New York, New York, having supervision over the project, or to such other officer as the Commission may designate, accurate statements of the work accomplished during the period and of the work contemplated under this permit for the ensuing period.

Article 10. The Permittee shall, during the period of project planning, coordinate its studies with the Division Engineer, Corps of Engineers, U.S. Army Engineer District, Waltham, Massachusetts, in order to permit evaluation of any effects on the Connecticut River stages, discharges and flow regime.

Article 11. The Permittee shall, during the period of project planning, cooperate with the United States Fish and Wildlife Service and the Massachusetts Division of Fisheries and Game for the purpose of planning and designing adequate conservation measures: (1) to prevent loss or damage to existing fish and wildlife resources, (2) to mitigate and compensate for the loss or damage to those resources, and (3) to develop and improve those resources where practicable.

Article 12. The Permittee shall, during the period of project planning, consult with the Department of Health, Education, and Welfare and the appropriate State and local agencies in order to permit evaluation of any adverse effects on water quality.

Article 13. The Permittee shall, during the period of project planning, consult with the appropriate State and local agencies to determine any necessary mosquito control measures.

Article 14. The Permittee shall, during the early period of project planning, consult with Federal, State, and local agencies having an interest in outdoor recreation on project lands and waters, in the preparation of an "Exhibit R" required for the filing of an application for license pursuant to Section 4.41 of the Commission's regulations under the Federal Power Act.

Article 15. The Permittee shall, for the purpose of assuring the cooperation required by the terms of the permit, designate a liaison officer to act for the Permittee in keeping the several agencies specified in this permit currently informed and such liaison officer shall communicate with such agencies within 60 days from the date of issuance of this permit.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this preliminary permit. In acknowledgement of the acceptance of this preliminary permit, it shall be signed for the permittee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

GEORGIA POWER COMPANY, PROJECT NO. 2341

ORDER WAIVING PENALTY FOR DELINQUENCY IN PAYMENT OF ANNUAL CHARGES

(Issued March 5, 1965)

On December 1, 1964, a statement of annual charges for the period March 1, 1959 through December 31, 1963 under the license for Project No. 2341 was mailed to Georgia Power Company, licensee for the project. It was noted on the statement that the charges should be paid "within 45 days of rendition of a bill therefor" pursuant to Section 11.31 of the Commission's Regulations under the Federal Power Act.

The licensee's check for such charges, in the amount billed, was mailed on January 22, 1965. Thus, under the Commission's Regulations a penalty attached by virtue of the delay in payment.

By letter dated January 26, 1965, the licensee requested a waiver of the penalty, stating that there was "confusion as to the payment of annual charges on Project No. 2341, due to a letter requesting a statement on KWH Generation on this Company's Flint River Project No. 1218 being attached to the statement on Project No. 2341."

Our records show that the licensee has made timely payments of annual charges owing under licenses held by the licensee for various other projects.

The Commission finds:

In the circumstances, it will not be inconsistent with the public interest to waive the penalty which attached by reason of the licensee's delay in payment of the annual charges under the license for Project No. 2341.

The Commission orders:

The above-mentioned penalty by reason of the delay of the licensee in the payment of annual charges under the license for Project No. 2341 for the period billed is hereby waived.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

MCNARY PROJECT, COLUMBIA RIVER, WASHINGTON-OREGON, DOCKET NO. E-6383

ALLOCATION OF COSTS

(Issued March 5, 1965)

The Congress, by the River and Harbor Act of March 2, 1945, Public Law No. 14, 79th Congress, 1st Session (59 Stat. 10), authorized the construction by the Corps of Engineers, Department of the Army, of the McNary dam project on the Columbia River "for purposes of navigation, power development, and irrigation * * *".

The enabling act cited above provides that surplus electric energy generated at the McNary dam shall be delivered to the Secretary of the Interior for disposition in accordance with existing laws relating to the disposition of power at the Bonneville dam. Section 6 of the Bonneville Act of August 20, 1937, Public Law 329, 75th Congress, 1st Session (50 Stat. 731), provides that rate schedules for the sale of Bonneville power shall be prepared by the Administrator and become effective upon confirmation and approval by the Federal Power Commission. Section 7 of the Bonneville Act states in part:

> * * * Rate schedules shall be based upon an allocation of costs made by the Federal Power Commission. In computing the cost of electric energy developed from water power created as an incident to and a by-product of the construction of the Bonneville project, the Federal Power Commission may allocate to the costs of electric facilities such a share of the cost of facilities having joint value for the production of electric energy and other purposes as the power development may fairly bear as compared with such other purposes.

The McNary project consists of a dam, navigation lock, hydroelectric power plant, and appurtenant structures, including facilities for passing anadromous fish and for project administration and housing of operating personnel. The power installation consists of 14 units rated at 70,000 kilowatts each, making a total rated capacity of 980,000 kilowatts.

By order issued December 4, 1953, the Commission made an interim allocation of costs pending the completion of the project in order that the results of such allocation would be available in determining the rates for the sale of power from the project. The project is now completed and the final cost and other applicable data have been supplied to the Commission.

The Commission's staff has analyzed all available data relating to the McNary project, has conferred with representatives of the Corps of Engineers and the Bonneville Power Administration, and has reviewed comments of the Secretary of the Interior and Acting Chief of Engineers with respect to the McNary allocation problem. On the basis of these studies the Commission's Bureau of Power has prepared and submitted a report, dated January 4, 1965 on "Allocation of Costs to Power Development, McNary Project, Columbia River, Washington-Oregon".*

The Commission having considered the matters hereinabove recited, the report of the Commission's Bureau of Power, the comments received from the Secretary of the Interior and the Acting Chief of Engineers, and other pertinent data relating to the McNary project together with the provisions of applicable statutes, *finds:*

(1) The federal interest rate of 2.5 percent, applicable during the period of construction of the McNary project, as determined under the provisions of paragraph 15 of the Bureau of the Budget's Circular No. A–47, dated December 31, 1952, is reasonable and appropriate for use in allocating the costs of the McNary project.

(2) The total investment cost of the McNary project, as of June 30, 1963, is $305,433,000 exclusive of specific recreation cost of $154,300.

(3) Inasmuch as irrigation development will not be benefited by the McNary project until some unknown future date, there should be no allocation of project costs to irrigation, at least for the present. Inasmuch as recreation is not an authorized project purpose, only the specific costs of recreation facilities should be allocated to recreation. Thus, the allocation of joint-use costs should be restricted to power and navigation.

(4) The use of the "Separable Costs-Remaining Benefits" method of cost allocation, as developed through federal inter-agency effort and set forth in the May 1958 report of the Inter-Agency Committee on Water Resources, entitled "Proposed Practices for Economic Analysis of River Basin Projects", is reasonable and appropriate in determining the allocation to power development of McNary project costs.

Upon consideration of the above findings and the report of the Bureau of Power, dated January 4, 1965, copy of which is attached hereto, and in the light of the provisions of the Bonneville Act and the River and Harbor Act of 1945, the Commission makes the following determination with respect to the allocation of McNary project costs to power development.

(A) The allocation of joint-use costs of the McNary project, including construction costs, interest during construction, and operation and maintenance expenses, is 18.7 percent to navigation and 81.3 percent to power.

(B) Applying the percentages set forth in paragraph (A) above to the joint-use investment cost as of June 30, 1963, results in allocating $47,730,600 of the total project investment cost to navigation, and $257,702,400 to power.

---

*Omitted in printing.

(C) The allocation made herein shall supersede the interim allocation made by the Commission set forth in its order of December 4, 1953.

Commissioner Ross *concurring*, joined by Commissioner Black.

Ross, *Commissioner, concurring:*

In view of the legislative history of the McNary project, I concur with the majority. However, in light of the increasingly heavy recreational use which exists at this project, I believe Congress should at this time amend the Act to allow an allocation for recreation for the remaining useful life of the project. Commissioner Black joins me in this concurring statement.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NEW YORK STATE ELECTRIC & GAS CORPORATION, PROJECT NO. 2438

ORDER ISSUING LICENSE (MAJOR)

(Issued March 5, 1965)

Application was filed on January 2, 1964 by New York State Electric & Gas Corporation (Applicant) of Ithaca, New York, for a license under Section 4(e) of the Federal Power Act (Act) for constructed Project No. 2438, known as the Waterloo and Seneca Falls Developments, located on the Seneca River (sometimes known as the Seneca Outlet) which is a part of the New York State Barge Canal System, in Seneca County, New York, in the Villages of Seneca Falls and Waterloo, New York.

According to the application, Project No. 2438 consists of: (1) the Waterloo Development, which was constructed and placed in operation in June, 1915, by a predecessor company of Applicant which acquired the plant in 1936; and (2) the Seneca Falls Development, which was constructed and placed in operation in July, 1917 by a predecesor company of Applicant which acquired the plant in 1936. The plant structures have remained substantially unchanged since original construction.

In our order issued December 9, 1964,[1] we stated that the Erie Canal, now called the New York Barge Canal, is one of the Nation's earliest and greatest improvements for internal navigation; that though developed by the State of New York and lying wholly within its borders, it has supported, from its inception, important traffic in interstate and foreign commerce through the port of New York; and that under well established principles of navigability, the Erie Canal, as long ago as 1903, was declared by the Supreme Court to be a navigable water of the United States.[2] We added, "When once found to be navigable, a waterway remains so."[3]

The Secretary of the Army and the Chief of Engineers have approved the plans of the project structures affecting navigation pursuant to Section 4(e) of the Act.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project, terms and conditions in the interests of fish and wildlife usually included in licenses for projects of the type herein under consideration.

---

[1] Niagara Mohawk Power Corporation, Project No. 2424, 32 FPC 1404.

[2] See, *The Robert W. Parsons*, 191 U.S. 17, 27 (1903).

[3] *United States* v. *Appalachian Electric Power Company*, 311 U.S. 377, 408 (1940).

The Department of Health, Education, and Welfare has advised that according to information from the New York State Department of Health, there is a need for a reassessment of the flow requirements in the river in the vicinity of the project. Results of any such reassessment and any resultant recommended change in flow requirements have not yet been submitted to the Commission. The subject project has no storage capacity and is operated as a run-of-river plant on releases by the State of New York. The provisions of Article 6 of Form L-3, herein made a part of the project license, reserve to the Commission the right to prescribe conditions for the protection of life, health and property upon the recommendation of the Department of Health, Education, and Welfare or the New York Department of Health.

While Applicant filed as part of its application an Exhibit R, it has not filed a recreational use plan appropriate for approval. By Article 31 herein we are requiring Applicant to cooperate with Federal, State and local agencies in the interest of recreation in connection with the use of project lands and waters by the public and to keep us advised at stated intervals with respect to the results.

In accordance with the criteria set forth in our April 25, 1962 Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of April 1, 1962 and a termination date of December 31, 1993.

The Commission finds:

(1) The project affects navigable waters of the United States.

(2) Applicant is a corporation organized under the laws of the State of New York, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of waterpower development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 13,200 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable.

(7) The project transmission and appurtenant facilities described in paragraph (B) below and which were included in the application for license are parts of the project within the meaning of Section 3(11) of the Act and should be included in the license for the project.

(8) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

(A) This license is hereby issued to New York State Electric & Gas Corporation (Licensee) of Ithaca, New York, under Section 4(e) of the Federal Power Act (Act) for a period effective as of April 1, 1962 and terminating December 31, 1993, for the continued operation and maintenance of the Waterloo and Seneca Falls Developments, Project No. 2438, located on the Seneca River, a part of the New York State Barge Canal System, a navigable water of the United States, subject to the terms and conditions of the Act, which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2438 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interests in such lands necessary or appropriate for the purposes of the project, whether such lands or interests therein are owned or held by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit J: (FPC No. 2438-1) General Location Map;

Exhibit K: (FPC No. 2438-2) Waterloo Development; and (FPC No. 2438-3) Seneca Falls Development.

(ii) Project works comprised of:

Seneca Falls Development—A powerhouse, located on a concrete gravity-type dam owned by the State of New York, containing four 2,650 hp turbines each connected to a 2,000 kw generator; step-up transformers; a short 34.5 kv transmission line to Seneca Falls switchyard; and appurtenant electrical and mechanical facilities;

Waterloo Development—A concrete gravity-type dam; a canal; a powerhouse containing four 740 hp turbines each connected to a 480 kw generator; step-up transformers; a short 34.5 kv transmission line to Waterloo switchyard; and appurtenant electrical and mechanical facilities; the location, nature and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which formed part of the application and which are designated and described as follows:

Exhibit L: (FPC No. 2438-4) Waterloo Development—Plan, Elevation & Sections of Powerhouse; (FPC No. 2438-5) Seneca Falls Development—Plan, Elevation & Sections of Powerhouse; and

Exhibit M: Three typewritten sheets and two diagrams entitled, "General Descriptions of Mechanical, Electrical and Transmission Equipment and their Appurtenances", filed in the Commission January 2, 1964.

(iii) all other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-3 (Revised August 1, 1964), entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States," (32 FPC 1114), which terms and conditions, designated as Articles 1 through 29, are attached hereto and made a part hereof, except for Article 25 thereof; and subject to the following special conditions set forth as additional articles:

Article 30. The Licensee shall pay to the United States the following annual charge, effective as of April 1, 1962:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. The authorized installed capacity for such purpose is 13,200 horsepower.

Article 31. Licensee shall cooperate with Federal, State and local agencies in the development and maintenance of access areas and roads and such other facilities necessary for full recreational utilization by the public of project lands and waters, consistent with the terms of the license and the operation of the project. At the end of six (6) years from the date of issuance of this license and every sixth year thereafter, Licensee shall advise the Commission by letter of the results of cooperation with such agencies and of further recreation development at the project.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PACIFIC GAS & ELECTRIC COMPANY, OAKDALE IRRIGATION DISTRICT AND SOUTH SAN JOAQUIN IRRIGATION DISTRICT

ORDER APPROVING HEADWATER BENEFITS SETTLEMENT

(Issued March 5, 1965)

Pacific Gas & Electric Company (Pacific) on May 4, 1964, requested approval of agreements with the Oakdale Irrigation District and the South San Joaquin Irrigation District (Districts) concerning compensation for headwater benefits in the Stanislaus River basin in California. The Commission, as provided in section 13.1 of the Regulations under the Federal Power Act, may approve such settlements in lieu of a headwater benefits determination under section 10(f) of the Federal Power Act (16 U.S.C. 803(f)).

Pacific owns and operates in the basin Project No. 2019, called the Spicer reservoir, and Project No. 2130, consisting of the Relief and Strawberry reservoirs, the Spring Gap and Stanislaus developments, and the Melones powerplant. The Districts jointly own and operate Project No. 2005, consisting of the Donnells and Beardsley developments; Project No. 2067, consisting of the Tulloch development; and the unlicensed Melones dam and reservoir. Pacific's and Districts' project works are interspersed so that there is an exchange of headwater benefits.

Pacific and the Districts entered two contracts concerning their developments in the Stanislaus River basin. The so-called Melones contract, executed on January 2, 1925, settled claims between the parties as to their respective rights in and to the waters of the Stanislaus River and the waters impounded or to be impounded in any reservoirs constructed or to be constructed within the Stanislaus River basin by the parties, including claims associated with the construction, operation, and maintenance of the Melones powerplant by Pacific and the Melones dam and reservoir by the Districts. Except to the extent that it is inconsistent with the so-called Tri-Dam Project Contract, the Melones Contract still remains in full force and effect.

The Tri-Dam Project Contract, executed on July 9, 1952, and later amended, established terms and conditions for the Districts' construction of the Donnells, Beardsley, and Tulloch developments. Briefly, the arrangement was that the District would sell the power from these developments to Pacific in return for specified payments during the construction and operation of the project. The contract states:

> The obligations of Pacific and Districts to each other hereunder shall constitute full consideration for all benefits to be received hereunder including all headwater benefits by reason of any facilities of the parties now existing or to be constructed hereunder. In the event that, by reason of any requirement of the Federal Power Commission or other governmental authority having jurisdiction so to do, either party hereto is required to pay headwater benefits to the other by reason of such facilities, the amounts to be paid by Pacific to Districts hereunder shall be reduced by the amount of any such headwater benefit payment made to Districts or increased by the amount of any such headwater benefit payment received from Districts.
>
> No replacement, improvement or enlargement of Pacific's Stanislaus or Melones Plant shall result in any increase in Pacific's payments hereunder, even though additional forebay storage and head may be developed below Pacific's existing diversion to its Stanislaus Tunnel.
>
> The payments to be made hereunder do not cover or take into account benefits that may be received by either party hereto as a result of the development of an undeveloped head, or the development of additional storage or water supply, and compensation for any such benefits shall be the subject of a new or supplemental contract.

Since Pacific and the Districts relinquished rights to payments for headwater benefits to obtain other valuable rights, the agreements are contracts concerning headwater benefits compensation which may be filed by the parties under Section 13.1 of the Regulations under the Federal Power Act.

The Commission finds:

The agreements dated January 2, 1925, and July 9, 1952, as amended, between the Pacific Gas & Electric Company on the one hand and the Oakdale Irrigation District and the South San Joaquin Irrigation District on the other constitute an effective and reasonable method for compensating each party for headwater benefits received from the other party's projects in the Stanislaus River basin in California.

The Commission orders:

The aforesaid agreements are approved with respect to settlement of headwater benefits under section 13.1 of the Regulations under the Federal Power Act in lieu of headwater benefits determinations under Section 10(f) of the Federal Power Act until a further order of the Commission is required due to changes in conditions.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PUBLIC SERVICE COMPANY OF COLORADO, PROJECT NO. 2275

ORDER ISSUING LICENSE (MINOR)

(Issued March 5, 1965)

Application was filed on March 22, 1960, by Public Service Company of Colorado (Applicant) of Denver, Colorado, for a license for a minor-part license under Section 4(e) of the Federal Power Act for a constructed project, known as Salida Hydro Plant No. 1 and Salida Hydro Plant No. 2, designated as Project No. 2275, located on South Arkansas River and Fooses Creek, in Chaffee County, Colorado, and affecting lands of the United States within the San Isabel National Forest. Applicant, on December 11, 1963, filed application to amend its March 22, 1960 application to have it considered as an application for a minor license for the project.

The project was constructed in 1905 by a predecessor of Applicant. Additions and replacements were made between 1908 and 1957. Applicant acquired the project works on September 3, 1924. A special use permit for the project was issued by the Forest Service for a 50-year period ending March 21, 1960. Annual charges for the occupancy of forest lands by the project have been paid to the Forest Service through December 31, 1963.

The Department of the Interior, in reporting on the application, stated that the U.S. Fish and Wildlife Service finds that continued operation of the project will not significantly affect fish and wildlife resources and no special provisions will be required in the license, and that other interests of the Department would not be adversely affected by the issuance of a license.

The Forest Service, Department of Agriculture, in reporting on the application, stated that the terms and conditions for the protection and utilization of National Forest lands usually included in licenses for such projects would be sufficient to protect the interests of the Forest Service.

In our order on rehearing issued February 17, 1965, in *Wisconsin Power & Light Company, Project No. 2347, et al.*, 33 FPC 275, we stated that we would have no objection to the issuance of licenses for minor projects without waiving Sections 14 and 15 of the Federal Power Act and the other provisions of the Act necessary to the effectuation of those sections, provided the minor project applications are timely supplemented pursuant to Section 4.50 of our Regulations under the Act (18 CFR § 4.50), which relates to applications for major projects. In the event the Applicant herein wishes a license in which those provisions of the Act are not waived it should so advise us within 30 days from the date of issuance of this order and file its supplemental application within 30 additional days thereafter.

Exhibit K (FPC No. 2275–3), filed as part of the application, is not sufficiently detailed to describe the lands of the United States which were withdrawn pursuant to the filing of the application for license or to determine the amount of annual charges to be paid under any license for the occupancy by the project of lands of the United States. Consequently, we are herein requiring the filing of a revised Exhibit K and deferring, until some future date, a determination of the annual land charges.

The Commission finds:

(1) Applicant is a corporation organized under the laws of the State of Colorado, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(2) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(3) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(4) The issuance of a license for the project will not interfere or be inconsistent with the purposes for which the San Isabel National Forest was created or acquired.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of waterpower development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 1747 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(7) It will be in the public interest to waive pursuant to Section 10(i) of the Act the terms and conditions contained in the following sections of Part I of the Act:

Section 4(b), except the second sentence thereof; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 11; 12; 14, except insofar as the power of condemnation is reserved; 15; 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

(8) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

(A) This license is hereby issued to Public Service Company of Colorado (Licensee) of Denver, Colorado, under Sections 4(e) and 10(i) of the Act for a period effective as of March 22, 1960, and terminating December 31, 1993, for the continued operation and maintenance of minor Project No. 2275, located on lands of the United States within the San Isabel National Forest, subject to the terms and conditions of the Act insofar as not expressly waived herein, which Act is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2275 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined;

(ii) Project works comprised of:

(a) Salida Hydro No. 1 consisting of a concrete gravity dam, 10 feet high with a 50-foot crest length across South Arkansas River, creating a forebay with an area of 0.32 acres and 3 acre-feet capacity known as the Garfield Diversion Reservoir; a riveted steel pipeline varying from 24 to 16 inches in diameter and 4806 feet long (2553 feet of which is on lands of the United States), extending to Fooses Creek Reservoir (3.675 acres) from which extends Pressure Pipe Line No. 1, which is a welded steel pipe varying from 30 to 24 inches in diameter and 8080 feet long (4498 feet on United States lands), to Salida Powerhouse No. 1, which contains a 750 KW generator connected to a 2300/17,000 volt substation;

(b) Salida Hydro No. 2, consisting of a forebay which is the afterbay for the Salida No. 1 plant; Pressure Pipe Line No. 2, a welded steel pipeline varying from 34 to 28 inches in diameter and 11,668 feet long (2486 feet on United States lands), extending to Salida Powerhouse No. 2 which contains a 560 KW generator connected to a 2300/17,000 volt substation, and

(c) A 17,000-volt transmission line between Salida Hydros Nos. 1 and 2; together with all other structures, equipment, or facilities used or useful in the maintenance and operation of the project and located on the project area; which lands and project works are more specifically shown by certain exhibits which formed part of the application and which are designated and described as follows:

Exhibit J: Sheet 1 of 2 (FPC No. 2275–1) entitled "Salida Hydro Reservoirs & Water Conduits;"

Exhibit K: Sheet 2 of 2 (FPC No. 2275–4) entitled "Salida Hydro Reservoirs & Water Conduits."

(C) This license is also subject to the terms and conditions set forth in Form L–7, December 15, 1953, entitled "Terms and Conditions of License for Minor Project Affecting Lands of the United States" (17 FPC 486), which terms and conditions, designated as Articles 1 through 14, are attached hereto and made a part hereof; and subject to the following special conditions set forth herein as additional articles:

Article 15. The Licensee shall, within one year from the date of issuance of this license, file with the Commission revised Exhibits J and K showing the final project boundary, including the transmission line right-of-way, in accordance with the rules and regulations of the Commission.

Article 16. The Licensee shall pay to the United States the following annual charges:

(i) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, $90 per annum, effective January 1, 1965.

(ii) For the purpose of recompensing the United States for the use, occupancy and enjoyment of its land for project purposes, effective January 1, 1965, an amount to be determined hereafter by the Commission.

(iii) For the purpose of recompensing the United States for the use, occupancy and enjoyment of its land for transmission line purposes, effective January 1, 1965, an amount to be determined hereafter by the Commission.

Article 17. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and recreational purposes, including fishing and hunting, and shall allow to a reasonable extent for such purposes the construction of access roads, wharves, landings, and other facilities on its lands the occupancy of which may in appropriate circumstances be subject to payment of rent to the Licensee in a reasonable amount: *Provided*, That the Licensee may reserve from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property and *Provided further*, That the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities. These facilities are in addition to the facilities that the Licensee may construct and maintain as required by the license.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license.

(E) The terms and conditions of the Act, which it has been found above to be in the public interest to waive, are hereby excluded from this license.

(F) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SUN OIL COMPANY

ORDER DENYING APPLICATION FOR REHEARING

(Issued March 5, 1965)

On February 5, 1965, Sun Oil Company (Sun) filed an application for rehearing of the Commission's letter order issued January 6, 1965, 33 FPC 26, rejecting notices of change in rate tendered by Sun which were designated by Sun as Supplement Nos. 3, 1 and 5 to Sun's FPC Gas Rate Schedule Nos. 125, 131 and 133, respectively. The proposed increased rates of 18.24347¢ per Mcf (Rate Schedule Nos. 125 and 131) and 18.74¢ per Mcf (Rate Schedule No. 133) were rejected because they exceeded the 18¢ moratorium level imposed in Opinion No. 422 issued March 23, 1964, where permanent certificate authorization was granted for the sales involved here.

Sun in its application for rehearing claims that the Commission had no authority to impose the moratorium condition in the above certificate case. Sun's contentions as to the validity of the moratorium provision have been rejected previously in Opinion Nos. 422 and 422–A, 31 FPC 623, 1315, and, as Sun points out, it has petitioned for review of those opinions. Sun's attempt to raise again these issues here represents an unwarranted collateral attack on our decision in Opinion Nos. 422 and 422–A. These issues have been decided by us and any further action with respect to these issues must await disposition by the court of Sun's petition for review. We therefore see no need to discuss these matters further.

Sun also argues that even if the moratorium condition was properly imposed, the Commission should have treated the notices of change as proper up to 18¢ per Mcf, the moratorium level. Even assuming *arguendo* we have authority to construe the tenders in the manner asserted by Sun, a proposition with which we disagree, we are under no obligation to exercise such authority in a situation such as here where the company is fully aware that its filings are in conflict with a final order of this Commission. Under the circumstances presented here, we think it incumbent upon Sun, if it so desires, to make the 18¢ filings which would be consistent with the applicable moratorium provision.

The Commission orders:

For the reasons set forth above, Sun's application for rehearing filed on February 5, 1965, is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP65–267

ORDER INSTITUTING INVESTIGATION

(Issued March 5, 1965)

A large diameter pipeline of Tennessee Gas Transmission Company (Tennessee) on March 4, 1965, exploded at a point near Natchitoches, Louisiana. The explosion resulted in extensive loss of life and property damage.

Tennessee is a "natural-gas company" within the meaning of the Natural Gas Act and is, therefore, subject to the jurisdiction of the Commission.

The Commission finds:

It is necessary and proper in the public interest that an investigation of the explosion hereinbefore described be instituted by the Commission.

The Commission orders:

Pursuant to the provisions of the Natural Gas Act, particularly Section 14 thereof, an investigation of Tennessee Gas Transmission Company is hereby instituted for the purpose of investigating the facts, conditions, practices or operations relating to the explosion near Natchitoches, Louisiana.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PACIFIC GAS & ELECTRIC COMPANY, DOCKET NO. E-7190

ORDER AUTHORIZING ACQUISITION OF FACILITIES

(Issued March 8, 1965)

Pacific Gas & Electric Company (Applicant), filed an application on December 29, 1964, seeking an order authorizing it to acquire certain electric distribution facilities of the Pacific Power & Light Company (PP&L) and to consolidate and merge such distribution facilities with those of the Applicant.

Applicant is incorporated under the laws of the State of California and is authorized to do business in the State of California with its principal business office in San Francisco, California. Applicant is an operating public utility engaged principally in the business of furnishing electric and gas service throughout most of northern and central California with properties located and operations carried on entirely in California. It distributes electric energy in 202 incorporated cities, about 300 unincorporated communities, and an extensive rural area in 46 counties.

PP&L is a corporation organized under the laws of the State of Maine and qualified to do business in the States of Oregon, Wyoming, Washington, California, Montana and Idaho with its principal business office in Portland, Oregon. PP&L is an operating public utility principally engaged in the production, transmission, distribution, and sale of electricity in northern California, Oregon, Washington, Montana, Wyoming and Idaho. It obtains approximately 6% of its annual revenues from service in California.

The proposed transaction results from an agreement dated October 30, 1964 whereby PP&L has agreed to sell to Applicant and Applicant has agreed to purchase PP&L's electric distribution facilities including additions and betterments, as therein designated. The facilities consist of 12 kv distribution lines and taps which serve about 156 consumers located in the small communities of Trinity Center and Carrville, California, and near the county road extending northward from Trinity Center to Eagle Creek. Facilities are now supplied over a 20-mile 12 kv line from Castella, California, and in times of emergency by a 250 kw diesel generating plant located at Trinity Center.

Applicant represents that this power line is costly and difficult to maintain, and in the severe winter weather, is subject to interruption, and that PP&L believes that Applicant is in a better position to furnish dependable electric service to present and prospective customers in territories now served by PP&L. Applicant is presently constructing a five mile extension of its 12 kv distribution system northward along the west side of the Trinity Lake reservoir of the

USBR Ceneral Valley Project. A relatively short continuation of this extension will permit Applicant to connect to the facilities it proposes to acquire. Applicant states that it would then be in a position to economically furnish a dependable and adequate supply of power to the area.

Applicant proposes to adopt, for the customers it will acquire, rates and charges for electric service equivalent to those of PP&L now in effect in the area.

According to the application, the Applicant has agreed to pay PP&L the sum of $144,921 as a cash consideration for these electric distribution facilities subject to adjustments or net additions and depreciation accrued from September 30, 1964 to date of conveyance. The base price of $144,921 as of September 30, 1964, was the same as original cost depreciated as of the same date. Therefore, on the books of the Applicant, the acquisition of the facilities will not result in the creation of an acquisition adjustment; and on the books of PP&L, the sale of the facilities will not result in a gain or loss.

Applicant alleges that the agreement dated October 30, 1964, is the result of arm's-length bargaining and that its terms and provisions are fair, just and reasonable.

Written notice of the application has been given to the California Public Utilities Commission and to the Governor of that State. Notice was also published in the Federal Register on January 13, 1965 (30 F.R. 456), stating that any person desiring to be heard or to make any protest with reference to the application, should on or before January 25, 1965, file petitions or protests with the Federal Power Commission, Washington, D.C. 20426. No petition or protest or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act subject to the jurisdiction of the Commission, as heretofore described in the Commission's order issued March 13, 1958, *In the Matter of Pacific Gas & Electric Company*, Docket No. E-6800 (19 FPC 326).

(2) By the proposed transaction, Applicant will merge or consolidate its facilities subject to the jurisdiction of the Commission with those of PP&L, another person, within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed acquisition of facilities by Applicant, as described above, upon the terms and conditions set forth in the application, and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

(4) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The proposed acquisition by Applicant of the aforementioned electric facilities, all as described above, is authorized and approved upon the terms and conditions and for the purposes set forth in the application subject to the provisions of this order.

(B) Applicant shall record the proposed transaction herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) This authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation or property claimed or asserted by this Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNITED FUEL GAS COMPANY, DOCKET NO. CP65-207

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 8, 1965)

On January 8, 1965, United Fuel Gas Company (Applicant), Charleston, West Virginia, filed in Docket No. CP65-207 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of natural gas facilities and the sale of natural gas, all as more fully set forth in the application on file with the Commission.

Applicant seeks authorization for the sale of natural gas to Columbia Gas of Kentucky, Inc., (Columbia) an affiliated wholesale customer of Applicant, for resale to The International Nickel Company, Inc. for use in a new plant being constructed at Burnaugh, Boyd County, Kentucky.

Total estimated volumes of natural gas involved to meet annual and peak day requirements for the initial three year period of proposed operations are stated to be:

	First year	Second year	Third year
Annual (Mcf)	25,000	70,000	120,000
Peak day (Mcf)	600	1,200	2,000

Applicant proposes to construct and operate a measuring and regulating facility on its 10-inch line in Boyd County, Kentucky. The estimated cost is $7,900, and will be financed with internal generated funds.

A temporary certificate was issued to Applicant by Commission letter dated February 12, 1965, granting the authorization requested herein.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 4, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Fuel Gas Company, a West Virginia corporation having its principal place of business in Charleston, West Virginia, is a "Natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 1, 1944, in Docket No. G-341 (4 FPC 534).

(2) The proposed construction and operation of facilities and sale and delivery of natural gas by Applicant to Columbia as hereinbefore described, and as more fully set forth in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and sale and delivery of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to the Applicant in this proceeding, authorizing the construction and operation of facilities and the sale, transportation and delivery of natural gas to Columbia as more fully described in the application and exhibits in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid regulations within 90 days of the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP65-90

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 8, 1965)

On October 2, 1964, United Gas Pipe Line Company (Applicant) filed in Docket No. CP65-90 an application as supplemented on December 14, 1964, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas in interstate commerce for Spencer Chemical Division of Gulf Oil Corporation (Spencer), all as more fully set forth in the application as supplemented.

Applicant will transport natural gas for Spencer at a rate of seven cents per Mcf pursuant to an agreement between the parties dated August 31, 1964, from Spencer's Claiborne Gasoline Plant located in the Lisbon Field, Claiborne Parish, Louisiana, to Spencer's Vicksburg Chemical Plant located in Warren County, Mississippi. Applicant estimates that annual and peak day quantities of gas to be transported during each of the first three years of service are 3,650,000 Mcf and 15,000 Mcf, respectively. Transportation will be by means of existing facilities.

Applicant is presently meeting the requirements of the chemical plant by delivering on a firm basis a maximum daily quantity of 20,000 Mcf of gas. After the commencement of the transportation service, Applicant will supply Spencer's plant requirements in excess of those satisfied by the transportation service. Although not requested in the subject application, it appears appropriate to include in the certificate hereinafter issued authorization to operate facilities for the transportation and delivery of the volumes of gas sold by Applicant to Spencer on a firm basis.

After due notice no petition to intervene, notice of intervention, or protest to the granting of the application has been received.

At a hearing held on March 4, 1965, the Commission on its own motion received and made part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G-232 (3 FPC 863).

(2) The operation of facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, will be for the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the operation thereof and transportation of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The operation of facilities and transportation of natural gas by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), and (e) of Section 157.20 of said Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the quantity of natural gas transported and delivered to Spencer on a firm basis should be limited to a maximum of 20,000 Mcf per day.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the certificate issued hereinafter shall not entitle Spencer, to whom firm deliveries are authorized herein, to any priorities or rights to additional gas for meeting any future increases in its requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, United Gas Pipe Line Company, authorizing the operation of facilities and the transportation of natural gas in interstate commerce, as hereinbefore described and as more fully described in the application, as supplemented, in this proceeding.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder is conditioned upon Applicant's compliance with all Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), and (e) of Section 157.20 of said Regulations.

(C) The service authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Regulations under the Natural Gas Act, within 60 days from the date on which this order issues.

(D) The total quantity of natural gas delivered by Applicant on a firm basis to Spencer be and the same is hereby limited to a maximum of 20,000 Mcf per day.

(E) The certificate issued by paragraph (A) above shall not entitle Spencer, to whom firm deliveries are authorized therein, to any priorities or rights to additional gas for meeting any future increases in its requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNITED STATES DEPARTMENT OF THE INTERIOR, BONNEVILLE POWER ADMINISTRATION, DOCKET NO. E-7208

ORDER CONFIRMING AND APPROVING RATE SCHEDULE

(Issued March 8, 1965)

On February 2, 1965, the Assistant Secretary of the Interior, acting on behalf of the Bonneville Power Administration (Bonneville), pursuant to the provisions of the Bonneville Act (50 Stat. 731), as amended, filed a request that the Commission approve the application of the special rate included in a power sales contract (Contract No. 14-03-48585) with the Bureau of Mines for a period beginning August 12, 1964, and ending December 19, 1965.

The power sales agreement between Bonneville Power Administrator and the Director, Bureau of Mines, provided for electric service to the Bureau of Mines Albany Metallurgy Research Center in Albany, Oregon. The contract was executed January 13, 1965, with an effective date commencing August 12, 1964, and terminating December 19, 1965. It takes the place of, and extends the conditions provided in, the former contract between the same parties which expired August 12, 1964. The purpose of the contract is to supply electric energy to the Albany Metallurgy Research Center for experiments with the development of new and improved metal processing methods employing electric energy. The rate proposed in the new contract is the same as that in the expired contract, namely, 2.5 mills per kilowatt-hour.

The Commission, by orders issued March 23, 1945, 4 FPC 885, and August 6, 1952, 11 FPC 1174, in Docket No. IT-5519, heretofore approved the special rate which was set forth in similar contracts with the Bureau of Mines.

The Commission finds:

It is appropriate for the purposes of the Bonneville Act that the rates and charges contained in the Contract No. 14-03-48585, executed January 13, 1965, between Bonneville and the Bureau of Mines be confirmed and approved.

The Commission orders:

The rates and charges, contained in the Contract No. 14-03-48585 between Bonneville and the Bureau of Mines referred to hereinbefore are confirmed and approved for a period expiring December 19, 1965.

OPINION NO. 452

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., PROJECT NO. 2338

OPINION AND ORDER ISSUING LICENSE AND REOPENING AND REMAINING PROCEEDING FOR ADDITIONAL EVIDENCE ON THE LOCATION OF THE PRIMARY LINES AND DESIGN OF FISH PROTECTIVE FACILITIES

(Issued March 9, 1965)*

Syllabus

1. Commission approval is not required for construction of interstate transmission lines by public utilities except [as here] where lines are primary lines from hydroelectric plant transmitting power from project into utility's interconnected transmission grid. P. 433.
2. Record supports findings as to engineering and economic feasibility, applican't ability to finance, adequacy of project to perform intended function and public utility's need for ever expanding sources of energy supply. P. 434.
3. Authority granted Commission under Federal Power Act is as broad as the public interest. P. 435.
4. Primary benefit from proposed project would be its economy and reliability as source of power to meet utility's peaking and emergency requirements. P. 436.
5. Project would contribute to abatement of air pollution problem in the City of New York. P. 436.
6. Commission can and will deny license in order to preserve natural beauty of an area when facts support such conclusion. P. 439.
7. In instant circumstances Commission cannot conclude that proposed Cornwall powerhouse substantially impairs scenic, historic or recreation values in area. P. 439.
8. To be licensed project must meet statutory test of "being best adapted to comprehensive plan for improving or developing a waterway". P. 440.
9. Reviewing all alternative suggestions and evidence of record, Commission *concludes* proposed project fully meets applicant's needs for additional capacity for peaking and emergency purposes in manner far superior to possible alternatives. P. 443.
10. No sufficient reason has been shown why public utility, and its consumers should be required to absorb additional costs for more underground cable installation in view of limited impact lines will have on area involved. P. 446.
11. Record does not permit informed determination called for under Section 10(a) regarding specification of route and amount of required right-of-way for primary transmission lines; public interest requires this phase be remanded to Examiner for additional evidence. P. 447.

---

*Initial decision appears on p. 465. Opinion No. 452-A issued May 6, 1965, denies rehearing and stay, etc., 33 FPC 965. Set aside, 354 F. 2d 608 (CA2-1965), cert. den. 384 U.S. 941.

12. In view of comments, Commission imposes special conditions in license to require company to consult with public agencies in design, construction and operation of fish screening facilities. P. 449.
13. Applicant required to file its proposed recreational use plan for Commission approval. P. 451.
14. Commission *issues* major license, under Section 4(e) of the Federal Power Act, for Cornwall Pumped Storage Project.

Commissioner Ross *concurring in part* and *dissenting in part.*

Randall J. LeBoeuf Jr., Craigh Leonard and *Carl B. Hobelman* for Consolidated Edison Company of New York, Inc.

Raymond H. Bradford for the Village of Cornwall, New York.

Dale E. Doty for Scenic Hudson Preservation Conference.

C. Edward Doyle for Philipstown Citizens Association.

John C. Tuttle for the Town of Cortlandt, New York.

Samuel L. Slutzky for the Town of Putnam Valley, New York.

Robert A. Cook for the New York State Water Resources Commission.

John Kibbe and *Raymond Margles* for the Town of Yorktown, New York.

John D. Lane, George Bruder and *Michel Levant* for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

SWIDLER, *Chairman:*

I

BACKGROUND AND ISSUES

This is a proceeding under Part I of the Federal Power Act[1] involving an application by Consolidated Edison Company of New York, Inc. (Con Edison or applicant) for a section 4(e) license to build a hydroelectrical project on the Hudson River in New York State to be known as the Cornwall Pumped Storage Project (the project). Since the Hudson River is a navigable water of the United States,[2] the project is subject to the jurisdiction of this Commission. The matter is now before us for determination upon exceptions[3] to the decision of the Presiding Examiner issued July 31, 1964, recommending that a license be granted.

The project is to be physically located in a general area of our nation steeped in the history of the American Revolution and of the colonial period. It is also a general area of great scenic beauty. The principal issue which must be decided is whether the project's effect on the scenic, historical and recreational values of the area are such that we should deny the application.

The project has now been under study by the Commission for more than two years. Extensive public hearings have been held before an Examiner of the Commission in order to give all interested parties an opportunity to present their views. All parties were also permitted to argue their position orally before the full Commission. Plans for the proposed project were submitted to the interested State and Federal agencies for their consideration and comment. The Department of the Interior made a number of suggestions for license articles, all of which have been carefully considered.

---

[1] 49 Stat. 838, 16 U.S.C. 791a, *et seq.*

[2] *Gibbons v. Ogden,* 22 U.S. 1; *U.S. v. Rio Grande Irrigation Co.,* 174 U.S. 690, 709.

[3] Filed by Philipstown Citizens Association, Town of Putnam Valley, Town of Yorktown, Village of Cornwall, Scenic Hudson Preservation Conference, Con Edison, and the staff of this Commission. Briefs opposing the exceptions have been filed by Scenic Hudson, Con Edison, and the staff.

Because of the great importance of this proposed project and the Commission's concern with the scenic and historical values of this area to all the citizens of this country, the members of the Commission visited the area during the month of May 1964. While our decision is and must be based upon the record compiled in this proceeding, the evidence has been evaluated against the background of the personal knowledge so obtained.

Description of Project

This proceeding involves a relatively new type of hydroelectric works, a pumped storage plant. It may be helpful at the outset to refer to the unique features of such a plant which are explained in the Commission's National Power Survey Report as follows (pp. 69–70):

> A pumped storage plant generates electric energy during system peak load periods, using hydroelectric units driven by water from a headwater pool. During off-peak periods energy from other sources, usually from steam-electric plants, is used to pump water from a lower pool back to the headwater pool. The water in the upper pool may thus be regarded as the equivalent of stored steam-generated energy. The pumped storage generating plants have many of the favorable characteristics of conventional hydroelectric plants for peaking and reserve use * * *.
>
> A prerequisite for a pumped storage development is the availability of energy at low incremental cost for the pumping cycle. For every 2 kilowatt-hours of energy generated, approximately 3 kilowatt-hours of energy are required for pumping. Reduced equipment cost brought about by the development in recent years of the reversible pump-turbine unit, permitting pumping and generating operations to be combined in a single machine, has contributed importantly to the economics of pumped storage installations.
>
> Pumped storage projects are usually more economically developed at sites having high heads. The heads of existing projects range up to 820 feet, but additional projects are being planned with heads in excess of 1,000 feet. Costs of development depend upon individual site conditions. Economically attractive projects generally cost $100 to $120 per kilowatt or less.

The illustration explains the mode of operation of a pumped storage project such as that proposed by the applicant.

The examiner has provided a detailed description of the Cornwall pumped storage project in his initial decision and it need not be repeated here but it will be helpful to summarize the major features of the project, especially as they relate to the issues before us.

The evidence shows that the project would be the world's largest high-head pumped storage development with a maximum peaking capacity of 2,000,000 kw. It is to be situated mainly on the west side of the Hudson River, approximately 40 miles north of New York City, in the Village of Cornwall and Towns of Cornwall and Highlands, Orange County, New York. Its estimated cost, including the project transmission facilities, is approximately $162,000,000. The project will thus provide capacity for about $81 per kilowatt at the 2,000,000 kilowatt rating or approximately $90 per kilowatt at the 1,800,000 kilowatt name plane capacity. As with all pumped storage projects it is intended for meeting peak loads rather than to supply around-the-clock generation.

OPERATION OF PUMPED-STORAGE PLANT

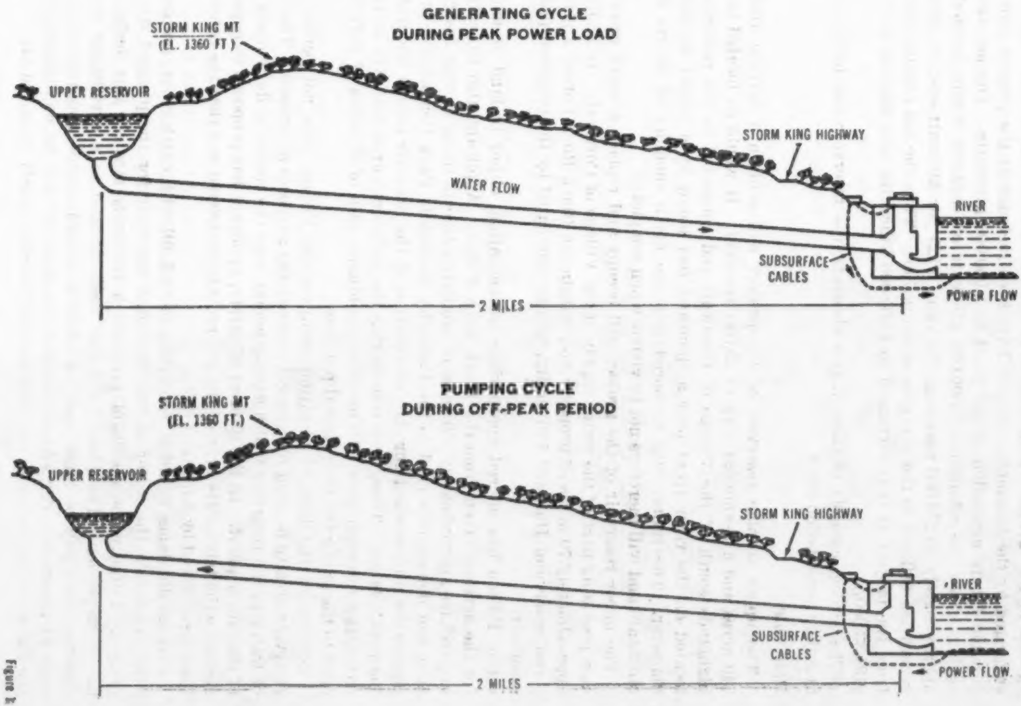

GENERATING CYCLE
DURING PEAK POWER LOAD
STORM KING MT
(EL. 1360 FT.)
UPPER RESERVOIR
STORM KING HIGHWAY
WATER FLOW
RIVER
SUBSURFACE CABLES
POWER FLOW
2 MILES
PUMPING CYCLE
DURING OFF-PEAK PERIOD
STORM KING MT
(EL. 1360 FT.)
UPPER RESERVOIR
STORM KING HIGHWAY
RIVER
SUBSURFACE CABLES
POWER FLOW
2 MILES

Figure 1

As detailed in the examiner's decision, the total monetary advantage of the Cornwall project over the costs of a conventional single-reheat thermal plant of the same capacity installed in N.Y.C. would be about $12,000,000 at 1,800,000 kilowatts and $15,663,000 at the 2,000,000 kilowatt level planned for construction. In view of the favorable economics of future units, some minimal provisions[4] as suggested by the Commission's staff have been included at the present time for possible future expansion of the plant to 3,000,000 kilowatts. The net annual savings from the additional 1,000,000 kilowatt of capacity would amount to approximately $4,270,000 assuming the same $125 per kilowatt cost of thermal generation utilized in the previous computations. Thus the net annual benefits from the project, if it is increased to 3,000,000 kilowatts, will amount to about $19,933,000.

The project consists of three major elements, the reservoir, the power plant and the transmission lines.

Reservoir

The upper storage reservoir of the project will contain a surface area of 240 acres and a usable capacity of 25,000 acre-feet. It would be located in the highlands south of the Village of Cornwall and connected to the powerhouse located on the river front over a thousand feet below by a tunnel 40 feet in diameter. The tunnel will be bored into the north shoulder of Storm King Mountain and will therefore not be visible when completed.

The upper reservoir of the project will occupy and replace a small reservoir now providing part of the water supply of the Village of Cornwall. In addition, approximately 70 acres of property now within the Black Rock Forest, a private forest reserve of Harvard University, will be inundated by the proposed project reservoir.

Con Edison has offered appropriate compensation, either in land or money, for the acreage taken from the Black Rock Forest. Applicant also has offered to purchase approximately 150 acres of property adjacent to the storage reservoir area and donate this land to the Palisades Interstate Park Commission in exchange for an easement for the construction of the pressure tunnel underneath the park's lands. Thus, even considering the additional area that will be inundated, the reservoir area will provide a minimum gain of 80 acres of park land open to the public for recreational purposes.

Because of the lack of filtration facilities the Village does not permit the reservoir area to be used for general recreational purposes at present. The level of water in the reservoir will fluctuate widely over the course of daily operation of the power plant. In the interest of safety, applicant has proposed that public access to the immediate area of the reservoir be restricted and that the reservoir itself be enclosed by fencing.

Five saddle dams, or dikes, consisting of rock fill with earth cover, are necessary to contain the water in the expanded reservoir for the pumped storage project. Initially the applicant proposed a relatively straight line design for this construction. The plans have now been changed to a curvilinear design and the dikes will be landscaped to afford a natural scenic appearance to the finished reservoir. For all appearances, the reservoir will be no different from the many natural lakes in the area and will be visible only from the air.

---

[4] These provisions consist of strengthening the core of the dikes at the time of initial construction and thickening the steel in the penstocks. The total cost of these additions is approximately $1,800,000. Con Edison's vice-president stated that, even apart from the possible future expansion, this expenditure is justified as increasing the safety factor of the project at the 2,000,000 kilowatt level proposed and is acceptable to the applicant.

The Power Plant

The powerhouse, which is both a pumping and generating station, would be located on the west shore of the river at the base of Storm King Mountain. A total of eight pumping-generator units are scheduled for installation, three to go into operation in mid-1967 and the remaining five in 1968. The generators would have a combined nameplate capacity rating of 1,800,000 kilowatts and a dependable capacity of 2,000,000 kilowatts. When pumping, the powerhouse would draw approximately 17,000 cfs from the Hudson and, when generating, discharge between 25,000 and 27,000 cfs into the river and would operate under a static hydraulic head varying between 1,000 and 1,160 feet.

The powerhouse will extend approximately 30 feet above the river. The major portion of the powerhouse facilities, notably the turbine-generators, will be located underground or, rather, underwater. The plant will extend to a depth of 80 feet below the level of the river which is more than one-half mile wide in this reach. The plant will be approximately 800 feet in length.

Behind the plant at roof level will be located eight transformers, each with its accessory lightning arrestors. The transformers are relatively inconspicuous tank-like structures which will protrude less than 30 feet above the roof level. The only equipment on the roof will be a gantry crane approximately 70 feet in height used for servicing the generating units. This crane will be parked in a landscaped area at one end of the structure except for the rare occasions when it is actually in use. In addition, various switchyard apparatus will be located on a terrace area recessed inconspicuously into the existing slope of Storm King Mountain.

The powerhouse and upper switchyard will be at the base of Storm King Mountain well below Storm King Highway which now cuts across the mountainside at an elevation between 250 and 300 feet in the area planned for the plant. No excavation of the mountain above the existing cut for the highway will be necessary. The plant will be screened from the highway by foliage. Applicant has agreed that, following the construction, the area surrounding the plant and any other areas denuded in the building of the project will be suitably replanted under the direction of one of the country's leading firms of landscape architects. A 55 acre tract will be transferred to the Village of Cornwall for its use as a public park.

The powerhouse will be constructed on privately owned land within the boundaries of the Village of Cornwall which is now occupied by a number of buildings and other structures in varying stages of disrepair and decay.

Transmission Lines

The approval of the Federal Power Commission is not required for the construction of interstate transmission lines by public utilities, except in a situation such as is presented here where the lines are primary lines from a hydroelectric plant, that is to say, those lines which transmit the power from the hydroelectric project into the interconnected transmission grid of the company.

Initially Con Edison proposed to transmit the power from Cornwall by overhead cables across the Hudson River. It is now proposed that no transmission lines will be visible at the powerhouse and that the power will be routed by two 345-kv submarine circuits from the west to the east bank of the Hudson and then by underground cables for 1.6 miles to a switching station to be located at Nelsonville in the Town of Philipstown. From this point the applicant proposes the use of conventional EHV overhead transmission lines for the remaining stretch of 24 miles to Con Edison's system at its Millwood substation in the Town of New Castle and then along an existing right-of-way for 19 miles until it reaches the main transmission system at the Sprain Brook substation. The issues in this phase of the case are the routing of the line, the width of the right-of-way and whether it is feasible to place the line underground.

Issues

Insofar as the disposition of the issues in this case are concerned the controlling provision of the Federal Power Act is found in section 10(a), which provides that all licenses issued by the Commission for hydroelectric projects must comply with the following conditions:

> (a) That the project adopted, including the maps, plans, and specifications, shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of waterpower development, and for other beneficial public uses, including recreational purposes; and if necessary in order to secure such plan the Commission shall have authority to require the modification of any project and of the plans and specifications of the project works before approval.

The jurisdiction of the Commission in this proceeding is not contested by any of the parties. The record clearly supports the examiner's findings as to the engineering and economic feasibility of the proposed project, applicant's ability to finance it, the adequacy of the project to perform the function for which it is intended and the need by Con Edison for ever expanding sources of energy supply.

The positions of the parties may be summarized as follows: The applicant obviously desires the Commission to approve the project as proposed by it, but as hereinafter indicated is willing to accept certain modifications if found necessary in the public interest. Scenic Hudson, a group which was formed shortly after the public notice of Con Edison's application was issued[5] and which describes itself as "an association of a number of groups and organizations which are interested in the protection of certain sections of the Hudson River Valley which it believes are unique from a scenic, historical and recreational standpoint in order to protect and preserve the resources for this and future generations to enjoy," contends that the Cornwall project would irrevocably mar the beauty of the Hudson River and that it is contrary to the public interest to sanction the construction of the project. It asks that the Commission deny the application as not meeting the "other beneficial public uses" standard of section 10(a) of the Act.

The Village of Cornwall, within whose boundaries the powerhouse of the project would be located and which would be the single community most vitally affected by the project, has intervened in support of the project. It sets forth the following claimed benefits to the community: (1) an increase in the assessed property valuation from the current $5,500,000 to an anticipated $45,000,000 or $50,000,000, thereby providing greatly increased revenues to the Village and to the school district; (2) the demolition and razing of a present unsightly shoreline to be replaced with a 55-acre recreational park on land acquired and donated to the Village by the applicant; (3) a redeveloped water supply system costing about $2,000,000 capable of providing more than twice the quantities of water presently available, in consideration of the flooding out of one of the present Village supply reservoirs by the upper reservoir of the project; and (4) lowered fire insurance rates as a result of the improvement in water supply. In addition, since the new water supply system to be paid for by Con Edison would include filtration facilities, the change would permit boating and fishing in Cornwall's other reservoirs, activities not presently feasible.[6]

---

[5] Scenic Hudson's representative has stated that while the Cornwall project provided the impetus for its organization it plans to remain in operation, irrespective of the final decision with regard to the project, to assist and work with other interested groups in the rejuvenation and restoration of the Hudson River Valley in the reach from approximately Bear Mountain Bridge to the City of Newburgh, New York.

The staff of the Commission supports the license application, claiming that the public interest will best be promoted by allowing Con Edison to construct and operate the Cornwall project.

The other interveners actively participating in the case and who have filed exceptions to the examiner's decision are the Philipstown Citizens Association, the Town of Putnam Valley and the Town of Yorktown. Each of these interveners is concerned not so much with the licensing of the project itself but with the characteristics, routing, and right-of-way of the project's transmission facilities.

In our view the authority granted to the Commission under the Federal Power Act is as broad as the public interest and is fully adequate to allow us to dispose of each of the issues in this case on its merits.[7] We have evaluated the project on this basis. The aesthetic considerations in particular have been carefully weighed because in appropriate cases, on a balancing of all factors, an application may and will be denied where construction of the project would seriously affect the natural beauty of the area.

It is clear from these contentions and the record that the real issue in this case is not primarily whether Con Edison has proposed a project which would serve its purposes better than any other (see Part III of this opinion) but, rather, whether the licensing of the project as proposed would be in the overall public interest. The problems which are presented may be considered under three headings. First are the scenic considerations on the Hudson River and in other areas which are raised by the project's facilities; the second is the transmission line problem; and third is a group of collateral questions including fish and wildlife protection, the safety of the project structures, notably the dikes forming the upper reservoir, the possibility of pollution to the water supply of the Village of Cornwall, the recreation plan for the project, and the project's effect upon navigation on the Hudson.

The Merits of the Project

Our task in this case is to balance the interests of the public in development of this site for the generation of power against any benefits to the public from retaining it in its present state.

Considerations which would favor development of this site are many. As a pumped storage site it is favored by nature. The value of such a site depends upon the "head" (the fall from the upper reservoir to the lower), location, and favorable construction features. Cornwall makes available a head of more than 1,000 feet, which is greater than any other site on the Hudson. It is located within 40 miles of New York City, central to a vast power pool and power market. A natural reservoir already in use can readily be enlarged to the required capacity by construction of saddle dams.

---

[6] The building of the plant would also contribute to the alleviation of the depressed employment condition now existing among the construction trades in Cornwall and its surrounding communities, particularly the City of Newburgh.

[7] See *Southern California Edison Co.*, Project No. 1930, 8 FPC 364, 385–386.

The primary benefit which will be realized from the proposed project is its economy and reliability as a source of power to meet Con Edison's peaking and emergency requirements. The undisputed proof shows that the Cornwall project would produce savings in the cost of electricity of over $12,000,000 each year as compared with a modern steam electric plant, the only practical alternative source suggested.

The Cornwall project would contribute to the abatement of the air pollution problem in the City of New York. It is true that 3 kwh of off-peak steam generation are required for every 2 kwh of peaking power produced by Cornwall. Nevertheless an appreciable reduction in the emission of gases and particulate matter will be achieved by permitting operation of Con Edison's existing and future thermal units at a steady level of output and also by the retirement of Con Edison's oldest and least efficient plants in New York City.[8] The project eliminates the need for cold starts and rapid loading of these steam plants, which result in poor combustion and the emission of large quantities of undesirable gases and solids. Moreover much of the pumping power for the plant in the future will be generated at plants outside New York City.

The benefits of the project would not be confined entirely to the area served directly by Con Edison. The availability of Cornwall power would enable Con Edison to assist other interconnected utilities in meeting their power needs, including those that render service in the Hudson River Valley area. These interconnections would also enable Con Edison to utilize off-peak economic energy from distant plants for pumping at Cornwall. Thus, the assurance of electric service reliability offered by the Cornwall project could be of advantage over a wide and densely populated area.

These advantages, however large, do not foreclose the question whether the project should be licensed. We must look also to the question whether it would do serious damage to the natural beauty of the area in question and its historic and recreational values, and determine whether the public interest would be better served by rejecting the project and leaving the site in its present state.

II

SCENIC, HISTORIC AND RECREATIONAL CONSIDERATIONS

For a better understanding of the scenic and recreational impact on each of the three major facets of the project, the reservoir area, the power plant area and the transmission line area, each of these will be discussed separately.

The Reservoir

As we have noted, the reservoir for the Cornwall project will be formed in a natural depression between the summits of two mountains, Mount Misery and White Horse Mountain. It will be visible only from the air. It will not flood any broad area of natural beauty or for that matter any houses or roads, or any of the precious and irreplaceable works of man which abound in the general area. The public will achieve a net gain of 80 acres of park land open to the public for recreation purposes in the vicinity of the reservoir. It is clear therefore that the reservoir could not in any way impair the scenic, historic or recreation values of the area.

---

[8] Con Edison has estimated that 750,000 kilowatts of existing thermal generating capacity will be switched from hot reserve to cold stand-by status with the advent of Cornwall power. This would consist of 500,000 kilowatts at the Hell Gate station, 200,000 kilowatts at Sherman Creek Station, and 50,000 kilowatts at other stations. This change will enable the complete shut down of the Hell Gate and Sherman Creek stations at an estimated saving of $2,850,000 in operating and maintenance costs.

The Powerhouse

The powerhouse for the Cornwall project is to be located on the river-front at the foot of Storm King Mountain and will be approximately 800 feet long. It will be 110 feet high but only some 30 feet will be above water or ground level. The powerhouse will constitute a large low-level building of concrete construction colored to blend with the natural rock of the mountain and will not be different from a water supply or other building normally located on the river front.

The powerhouse for the Cornwall project is basically different from a steam power plant and other industrial plants in that it will not have the obtrusive features usually associated with such structures. It will not have a tall stack releasing gases and particulate matter into the atmosphere, and it will not pollute the waters of the Hudson in any manner. The powerhouse will be a low-profile structure without the extensive and sometimes unsightly facilities necessary for the delivery and storage of fuels and supplies which are a part of steam plants and other industrial operations. It will not be a source of noise or of extensive vehicular traffic.

The powerhouse will be screened from the highway above by natural foliage, and the entire area surrounding the plant will be suitably planted.

One of the points made by Scenic Hudson is that the project will impair the view from the military reservation at West Point. Since Storm King Mountain is between the power plant and the military reservation, the power plant will be entirely out of sight to anyone standing on the reservation's grounds, and there can be no claim of scenic impairment from this source.

Another objection voiced to the project is the claim that the issuance of a license to Con Edison will open the door for the construction of other pumped storage developments along this reach of the Hudson River and general industrialization of the area. That other possible sites exist for pumped storage developments is not disputed; Con Edison's witnesses testified that they had considered other locations before selecting the Cornwall site as the one best suited for development. Applicant has stated that it has no plans for other hydroelectric power projects along the Hudson in this area. Whether applications for similar projects on this waterway will be filed by other companies in the future is not yet known. None have been filed to the present time. Furthermore, we do not see why construction of the project would lead to further industrialization in the area. Con Edison is building this project to supply its own service needs in New York City and its environs, not to supply cheap power for industrial purposes in the area of the project. It should also be noted that because the project will produce only peaking and emergency power it would not be a suitable power source for industrial plants. Thus, the project does not add any incentive for further industrialization of the area. In any event, this is a matter which is properly within the control of the state and local governments and over which we have no jurisdiction.

Con Edison will acquire a parcel of land extending about 4,000 feet along the west bank of the river to the north of the power plant. This ground will be used during the construction period for the deposit of surplus material excavated from the tunnel and powerhouse site. Upon completion of the construction phase, the property will be graded and replanted and then transferred to the Village for its continued use and enjoyment as a 55-acre public park. Con Edison also has offered to assist the authorities of the Town of Philipstown in cleaning up its river front in the area across the river from the project by a similar use of spoil from the construction on the west shore in order to create an improved waterfront along both sides of the Hudson.

We have observed that the powerhouse area is not used for any recreation purposes at present. The Cornwall Yacht Club and a small marina are located directly north of the powerhouse site. The use of these facilities will not be affected in any manner by the construction or operation of the project.

The proposed powerhouse will not involve the destruction of any historical shrines and its effect on the general scenic values of the area will be minimal. The powerhouse will merely add a well landscaped, low profile structure to the structures already in existence within the Cornwall area and visible from the river and from the opposite shore of the Hudson. It will not alter the existing environment in any conspicuous or unsightly way, and if anything, will enhance public recreation in the area.

Transmission Lines

The area of maximum scenic and historic interest with which we are here concerned is the general vicinity of the Cornwall powerhouse. The problems connected with the transmission lines, which will be discussed, *infra*, do not involve the same scenic and historical values as are at stake in the vicinity of Storm King Mountain. There are, however, substantial problems in connection with locating the transmission lines which cannot be resolved on the basis of the evidence presently in the record and which, as hereinafter brought out, requires remanding this phase of the proceeding for the development of additional evidence.

The transmission facilities as originally designed raised a serious problem with respect to the scenic values in the powerhouse area. Con Edison planned to erect the project switching station at the plant site and to transmit the power across the river by means of overhead lines. By the time the initial license application was filed on January 23, 1963, these plans had been changed and Con Edison proposed in its application that the Cornwall power be transmitted through two 345 kilovolt submarine circuits crossing under the river. The modification from overhead to submarine transmission for the river crossing increased applicant's transmission line cost by approximately $6,500,000.

The original plans were changed still further when Con Edison amended its application on September 13, 1963, to provide for erection of the Cornwall East Switching Station on the east side of the river at Nelsonville in the Town of Philipstown. This revision eliminated another stretch of overhead transmission lines in this scenic area. As now proposed, the submarine cable will be connected at its outlet to approximately 1.6 miles of underground cable which will carry the power downriver for about 5,000 feet along the east shore and then to the switching station lying about three-fourths of a mile inland, beyond the crest of the ridges rising from the river. Conversion of this short stretch of line from overhead to underground construction will add an additional $6,000,000 to project costs.

Con Edison indicated that the changes in the river crossing plan were prompted by the objections of those persons opposing transmission facilities within view of the river and by its desire to preserve the scenic values along the shoreline. These changes have eliminated any adverse impact of the project's transmission lines on the scenic values of the area since in no event will the lines be visible leaving the powerhouse, crossing the river, or for three-quarters of a mile inland. The contention has been made that the lines in Philipstown will impair the cross-river view from West Point. It is apparent that even if the transmission lines could be seen from the reservation grounds over a mile away, at that distance the lines would not seriously impair the view and only someone searching with binoculars could possibly see them.

Conclusions on the Scenic Issue

This Commission is of course not a newcomer to the conservation field. The Federal Water Power Act was the culmination of a long and hard fight by conservationists in the early 1900's to assure that the nation's water resources would be conserved by development for the benefit of the nation. As the Supreme Court observed in *First Iowa Hydro-Electric Coop* v. *F.P.C.*, 328 U.S. 152, 180–181 (1945) the Federal Power Act of 1920:

> was the outgrowth of a widely supported effort of the conservationists to secure enactment of a complete scheme of national regulation which would promote the comprehensive development of the water resources of the Nation, insofar as it was within the reach of the federal power to do so, instead of the piecemeal, restrictive, negative approach of the River and Harbor Acts and other federal laws previously enacted.

The Commission has been carrying out this role for almost five decades. In this case we have the difficult task of balancing the need for the development of our waterways to supply the growing demand for electricity and other project purposes against the desires of many citizens to preserve the natural landscape intact. The overall answer to this problem of conflicting needs is not susceptible to a cut and dried solution.

This Commission can and will deny a license in order to preserve the natural beauty of an area when the facts support such a conclusion. For example, in 1951 a hydro company applied for a license to construct a dam and hydroelectric project on the Namekagon River in Washburn County, Wisconsin.[9] The evidence showed that the Namekagon River was essentially a free-flowing stream located in one of the principal recreational areas of the nation and that in its natural state the section of the river involved was extensively used for fishing and canoeing. It was also found that these recreational aspects would be destroyed by the power project. In these circumstances the Commission denied the license application under the "other beneficial public uses" provision of section 10(a), even though the project appeared to be otherwise economically feasible.

The *Namekagon* case was a strong case on the facts and we would not want to be understood as holding that only where all the factors there involved were present would we deny a license because of scenic or other aesthetic considerations. Nevertheless, a comparison of the factors present in the *Namekagon* case with the facts here under consideration indicates the basis for our conclusion that, on balance, the license should be granted. In the cited case, the project would have directly affected and destroyed the recreational value of the river and would have deprived large numbers of our population of a unique source of pleasure which they had used for many years. The Hudson River Valley is also noted for its scenic beauty and admired not only by the local residents but by anyone who has had an opportunity to traverse it. However, as our previous discussion makes clear the Cornwall project will not substantially affect its beauty or its historical monuments, nor will it destroy or substantially impair the Valley's recreational potential.

We find that the impact of the project upon scenic resources will be minimal, that it will create additional recreational opportunities, and that its advantages for power supply purposes far outweigh any negative considerations. In these circumstances and viewing sympathetically the case made by Scenic Hudson, we cannot conclude that the Cornwall powerhouse substantially impairs the scenic, historic, or recreation values in the area. Whatever may be the negative aspect of adding this powerhouse at the foot of Storm King Mountain, on balance we do not believe it outweighs the public interest in the effective utilization of an unusually fine pumped storage site.

---

[9] *Namekagon Hydro Company,* Opinion No. 257, 12 FPC 203, affirmed *Namekagon Hydro Co.* v. *F.P.C.*, 216 F. 2d 509 (CA7-1954).

Our judgment in this case, however, cannot rest solely on our evaluation of the Cornwall project. To be licensed, the project must meet the statutory test of being "best adapted to a comprehensive plan for improving or developing a waterway." In applying this test we must compare the Cornwall project with any alternatives that are available. If on this record Con Edison has available an alternative source for meeting its power needs which is better adapted to the development of the Hudson River for all beneficial uses, including scenic beauty, this application should be denied.

III

ALTERNATIVES TO THE PROPOSED PROJECT

We come now to a consideration of the various alternatives. Con Edison provides electric service to the five boroughs of New York City and to a major portion of Weschester County, New York. Its service area is the most densely populated metropolitan center in the United States and a principal hub of national activity. It is not necessary to belabor the fact that interruptions in electric power supply to New York City must be minimized. Reliability of service is a matter of primary public concern.

A principal operational problem confronting Con Edison in meeting its load requirements without interruptions stems from the unusually high hourly fluctuations in its load. On a recent day the measured consumption was 1,600,000 kilowatts at 5 a.m. and by 9 a.m. the consumption had risen to 4,200,000 kilowatts. Peak loads on the Con Edison system are growing at an average rate of 300,000 kilowatts per year. Between 1963 and 1964 they increased 400,000 kilowatts. The presently anticipated peak load in 1968 is approximately 6,700,000 kilowatts, a 31 percent increase over the 1963 peak.

The evidence establishes that Con Edison's present capacity, including that now under construction, will be insufficient to supply the peak load reasonably expected in the summer of 1967. It is to meet this anticipated shortage that the initial generation at the Cornwall project has been planned by Con Edison to begin in mid-1967.

As we have previously observed, a pumped storage project is well suited to meet applicant's need for additional peaking power. However, there are other means by which Con Edison can obtain additional power to meet its continually increasing load which should be considered before a license is granted.

Alternative Pumped-Storage Site

Before discussing the various alternative methods of generation actually proposed by Scenic Hudson, it is appropriate first to consider whether an alternative location for a pumped-storage plant outside of the scenic highlands area could supply Con Edison's power requirements just as well as the proposed Cornwall project.

The National Power Survey Report points out that (p. 123):

> Pumped storage peaking projects are usually economical only when relatively high-head high-capacity projects are developed. They will, therefore, be restricted largely to those areas where the terrain is favorable and where they can be used in large interconnected systems.

The evidence is conclusive that there is no site along the Hudson River which approaches the favorable characteristics of the Cornwall location. Applicant's witness testified that a number of other possible sites had been studied but that none would have provided the very high head and peak power generation capability available at the Cornwall location. The second best site would have provided a head of only 600 feet compared to the 1,160 feet available at Cornwall and would have produced a power capability of 600,000 kilowatts, only one-third of the peak power required by Con Edison which will be produced by the Cornwall project. Moreover, this inferior alternative is also located in the same general area of the Hudson Highlands. It is therefore understandable that the parties opposing Cornwall on scenic grounds did not suggest that an alternative pumped-storage site would meet Con Edison's needs. It is apparent that any site that would eliminate the scenic problem would also virtually eliminate the possibility of a pumped-storage development.

Power Purchased from Interconnected Systems

Con Edison is already interconnected with all the major utility systems in New York State. A 345-kilovolt line is under construction to connect with the Connecticut Light and Power Company. A connection with Public Service Electric and Gas Company of New Jersey, designed for ultimate operation at 345 kilovolts, recently has been placed in operation. Future plans include a 345 kilovolt interconnection with the Keystone Project owned by utilities in Pennsylvania, Maryland, New Jersey and New York which consists of large steam plants located in the Pennsylvania coal fields. The present and contemplated interconnections are useful in distributing the available power supply in an economic manner and in permitting Con Edison to take full advantage of seasonal, daily or hourly diversities which may exist among the various companies' loads. However, Con Edison is relying fully upon such interconnections in estimating its future available capacity. They will help make the Cornwall project even more beneficial, but they cannot be an economic source of the large amount of additional power which Con Edison needs in the near future to meet its peak loads.

Efforts have been made to obtain a supply of hydroelectric power from Canadian sources. Negotiations for this source of supply have been going on for some years, but so far they have been inconclusive. Although the availability of this power would be of use to Con Edison in supplementing its peaking requirements during the summer months, due to the diversity in peaking capacity such as the Cornwall project is designed to furnish. As stated in the record, the possibility of a future Canadian interconnection is too uncertain for reliance at the present time, and, in any case, it would not fulfill Con Edison's needs for peaking power.

Nuclear Plants

Nuclear generation of electricity has made great strides in the last decade and there are now more than a dozen nuclear plants in operation with five more presently under construction. Con Edison presently operates one of the largest such plants in existence with a capacity of 255,000 kw [10] located at Indian Point, New York. Due to their relatively high initial cost and their operating characteristics, nuclear plants must be operated at a high load factor if they are to produce power at reasonable unit costs. Thus, while it may be that a nuclear plant could be efficiently utilized to meet base load requirements, such a plant would not meet Con Edison's need for peaking power. On the contrary, a nuclear plant is perhaps the least suited of any to meet applicant's need for peak-period energy. Moreover, we are here speaking of a plant with a capacity of 2,000,000 kw which is eight times as great as the applicant's existing nuclear plant, and more than twice as large as any nuclear plant now under construction.

---

[10] Approximately two-thirds of the capacity is fired by a nuclear reactor and one-third by an oil superheater.

It may be added that approval of the location of nuclear plants is in itself not free from difficulty as indicated by the fact that Con Edison's recent effort to build such a plant in New York City was ultimately abandoned before final decision was reached by the Atomic Energy Commission whether to permit such an installation at the chosen site.

Conventional Steam Plants

Of all the alternatives, new conventional steam capacity would perhaps be the most economical and the one which would involve the least delays and uncertainties. Nevertheless it is far from equalling Cornwall for Con Edison's purposes, and we have found no basis for rejecting the evidence that it would involve additional costs of at least $12,000,000 a year, without Cornwall's advantages of superior dependability and of minimizing the problem of air pollution.

Scenic Hudson Preservation Conference presented three alternatives as possible sources for the additional peaking and emergency capacity needed by applicant. These alternatives were a stripped-down steam turbine reserve plant and two different types of gas turbine jet power plants. However the evidence reveals the steam turbine power plant would produce peaking power at a total cost as high or higher than the Cornwall project and would have the serious disadvantage that it could not be used as continuously available reserve as the Cornwall project can without the incurrence of prohibitive fuel costs. Moreover, the witness testified that no stripped-down steam turbine reserve plant comparable in size to the Cornwall project had ever been built. As we have observed in the National Power Survey Report (p. 124):

> * * * Acceptance of these peaking units by the industry has been slow. With few exceptions to date, installations of more efficient units for base load operation has been generally more economical, the older less-efficient units being used for peaking.

The jet engine plants would have all of the drawbacks of a stripped-down steam plant and the additional problems of extreme noise and even higher generating costs per kilowatt-hour than the other alternatives.

To the extent that certain of the units could be operated on natural gas, the utilization of such gas supply, in the quantities which would be needed, for boiler fuel or for the generation of electrical energy by means of gas turbines, would raise serious policy considerations.[11] It should also be noted that while Con Edison's maximum peak-day demand occurs during the summer, it has a substantial peak demand during all months of the year. Thus, the suggestion that applicant could use natural gas fueled gas turbine generators would require that Con Edison contract for a firm gas supply, available on demand during all times in the year, whether used to its maximum on any particular day or not. This would be a far cry from the usual form of industrial gas supply where a reduced price is granted on condition that the interstate pipeline supplier is free to interrupt deliveries during its own periods of peak demand. It is apparent, therefore, that any such firm gas supply would be prohibitively expensive to Con Edison and to its consumers.

---

[11] *F.P.C. v. Transcontinental Gas Pipe Line Corp.*, 365 U.S. 1.

Gas turbines or jet engine plants may be advantageously used by small systems having a need for small amounts of peaking capacity or on systems where no other source of peaking power is readily available. The record is clear that this cannot be considered a reasonable alternative to the construction of the Cornwall project for meeting Con Ed's needs for 2,000,000 kw of peaking capacity.

Summary of Alternatives

After reviewing all of the alternative suggestions and the evidence in the record we must conclude that the proposed project fully meets the applicant's need for additional capacity for peaking and emergency purposes in a manner that is far superior to other possible alternatives. Indeed, were it not for the effect upon scenic values we doubt that anyone would challenge the fact that applicant has proposed an apt solution to its problem of providing additional power supply for the needs of its New York market.

IV

THE TRANSMISSION LINES BEYOND NELSONVILLE

The dispute in regard to the transmission lines has centered on the question of how best to deliver the power south and east a distance of approximately 24 miles beyond the Cornwall East Switching Station at Nelsonville in the Town of Philipstown, where the underground cable is proposed to stop, to the point where the primary line reaches Con Edison's substation at Millwood in the Town of New Castle and then would continue by overhead transmission on an existing right-of-way. Both Con Edison and the staff have recommended a 345 kilovolt double circuit overhead transmission line initially and provision for an additional 345 kilovolt line in the future, should an expansion of the project be undertaken.

At the hearings in May 1964, Con Edison presented its proposed plan of the transmission system. These included the submarine cables under the Hudson River, the 1.6 miles of underground cables along the river bank on the east side of the river and inland to the Cornwall East Switching Station at Nelsonville, and a double circuit overhead line running east and south through the Towns of Philipstown, Putnam Valley and Cortlandt to an intersection in Cortlandt with an existing right-of-way, and then southeast along this right-of-way to the Millwood substation. From Millwood the lines would run south on the existing right-of-way to Con Edison's Sprain Brook substation in Westchester County.

Con Edison estimated the cost of the transmission facilities which it proposed at $32,020,000. This cost included $9,830,000 for the submarine cable, $2,300,000 for the basic Cornwall East Switching Station, $6,580,000 for the 1.6 miles of underground cable and the incremental substation costs which such a cable would require, $8,020,000 for the 23.4 miles of overhead transmission line between the Cornwall East Switching Station and Millwood plus $340,000 of allocated right-of-way costs, and $4,950,000 for approximately twenty miles of overhead transmission from Millwood to Sprain Brook.

At the request of the Commission staff, Con Edison estimated the total cost of underground construction the entire distance from the east bank of the Hudson River to the Millwood substation, approximately twenty-three miles. The cost of the transmission facilities required for such an underground installation was estimated at $99,850,000, as contrasted to $14,600,000 which was the comparable cost of the overhead installation proposed by Con Edison, a difference of over $85,000,000.

In response to cross-examination by Scenic Hudson, Con Edison also estimated the total cost of underground transmission from the east bank of the Hudson River, at the terminus of the submarine cable, to a point on Con Edison's existing right-of-way between its Indian Point Nuclear Generating Station, on the eastern shore of the Hudson River in Westchester County, and its Millwood substation with transition at that point to overhead transmission for the remaining distance.[12] This would entail a total of approximately 18.6 miles of underground cable installation. The cost has been estimated by Con Edison at $85,448,000, which is $68,548,000 greater than the comparable cost of the overhead installation proposed by Con Edison.

Under Con Edison's original proposal, the overhead portion of the transmission line would commence at the Cornwall East Switching Station in Nelsonville and then proceed generally easterly through valleys in a hilly section in the Town of Philipstown toward McKeel Corners; the line would then run southeast, through Clarence Fahnestock Memorial Park, and then south through the Town of Putnam Valley to the Putnam-Westchester County line, which would be crossed near the outskirts of the City of Peekskill. The line would then proceed through a highly developed area in Peekskill to an intersection with Con Edison's existing right-of-way running easterly to Millwood from the Indian Point Nuclear Generating Station. The route as proposed would have required the acquisition of approximately 18.6 miles of new right-of-way, 250 feet wide, between the east bank of the Hudson and the point at which the transmission line would intersect the existing 400-foot wide right-of-way between Indian Point and Millwood. No additional right-of-way would be required beyond this point.[13]

Con Edison indicated that the overhead transmission line route which it proposed represented an earnest effort to locate the transmission facilities in a manner which would cause the least possible interference to the interests of local communities and property owners. The line would traverse generally wooded and sparsely settled areas wherever possible. Since transmission lines are most noticeable when erected along the crests of hills, the route selected would, wherever feasible, follow along contour lines at the base of hills, where the vegetation would be heaviest. The route would follow valleys and draws to the maximum extent possible where it was necessary to cross ridges.

The staff, after extensive study of the entire area, proposed a different route for the portion of the project transmission line between Nelsonville and Millwood, east of that suggested by Con Edison. This route would proceed about 10 miles along new right-of-way through the Towns of Philipstown and Putnam Valley to a point in the latter where the project transmission line would intersect a right-of-way presently owned by Con Edison and already occupied by two existing transmission lines. These existing lines are a recently placed 345 kilovolt double circuit line which is part of Con Edison's principal interconnection with Niagara Mohawk Power Corporation and other upstate New York

---

[12] An overhead line designed for 220 kilovolts but now operating at 138 kilovolts was constructed on this right-of-way by Con Edison a few years ago in connection with the construction of its Indian Point plant in the Village of Buchanan and Town of Cortlandt. The Town of Cortlandt, which objects to overhead lines in this proceeding, granted the zoning and other municipal consents required for the Indian Point plant and overhead line. In 1961 Con Edison and Orange and Rockland Utilities, Inc., which serves areas on the west side of the Hudson River opposite Indian Point, jointly constructed an overhead transmission line crossing of the Hudson River between Indian Point and Orange and Rockland's Lovett Generating Station.

[13] This existing right-of-way, as well as the proposed route, is shown in exhibit No. 30.

and New England power companies, and a 138 kilovolt double circuit line installed in the early 1930's which served as the only interconnection between the systems of Con Edison and Niagara Mohawk until the 345 kilovolt line was placed in operation in 1962. Staff's witness proposed a point of intersection with the existing right-of-way in the vicinity of the Carmel substation owned by New York State Electric and Gas Corporation, located about 14 miles north of Millwood. He indicated that the power could be carried south from Carmel through Yorktown to Millwood on a new right-of-way or by conversion of the existing 138 kilovolt double circuit line to a 345 kilovolt double circuit line. The staff witness testified that except for the Yorktown segment the alternative route would traverse a relatively underdeveloped and sparsely settled area and would avoid a number of highly developed areas which would be encountered along Con Edison's proposed route, particularly in its passage near the City of Peekskill. He further stated that, although his alternative route would be somewhat longer than under Con Edison's proposal, the amount of new right-of-way would be reduced. Finally, he indicated that the total cost from East Cornwall Switching Station to Millwood would be less by the alternative route.

It should be noted that the witness' comments regarding the shorter stretch of completely new right-of-way under staff's proposal (10 miles as against 18.6 miles for Con Edison's route) is predicated on a rebuilding of the 138 kilovolt line to 345 kilovolts or, if the 138 kilovolt line remains in place, on the ability of Con Edison to run the 345 kilovolt lines from the Cornwall project within the confines of the existing 200-foot wide right-of-way. If additional right-of-way were allowed between Carmel and Millwood, staff's route would exceed Con Edison's in the amount of new right-of-way required.

Con Edison, at least initially, opposed the route proposed by staff. In its brief it stated: "The route suggested by the Staff, as well as a number of other routes, had been considered by Con Edison and had been rejected as uneconomic and as imprudent system planning." It would appear, however, that its primary opposition to the staff's proposed route lay in the suggestion for the rebuilding of the 138 kilovolt line to 345 kilovolt operation as a means of transmitting the Cornwall power. Applicant stated that it would offer no objection to the alternative route, if determined best by the Commission, provided that the Carmel to Millwood section were situated on a new 250-foot width right-of-way paralleling and adjacent to the existing way. At the oral argument held before the Commission on November 17, 1964, Con Edison stated that the full 250-foot width of new right-of-way on this section may not in fact be necessary on its entire length and that some reduction, "possibly to 125 feet," could be allowed without unduly impairing its ability to transmit power from Cornwall.

Con Edison, in the course of the proceeding, suggested many reasons why it should not be ordered to replace the 138 kilovolt line with 345 kilovolt facilities as a method of transmitting the Cornwall power. Perhaps the most persuasive reason is that Con Edison claims that if it were required to rebuild the 138 kv line between Carmel and Millwood to 345 kv, the total transmission line cost from Cornwall East to Millwood would run as high as $16,837,000, approximately double the cost of carrying the power lines down a widened right-of-way. Furthermore, there would be no provision for transmitting the additional power if Cornwall were expanded to its 3,000,000 kw ultimate capacity.

Philipstown Citizens Association does not oppose the construction of the Cornwall project but objects to the erection of any part of the transmission line overhead within its boundaries, although it concedes that the route suggested by the staff would travel through a sparsely settled area. Putnam Valley, Yorktown and Cortlandt likewise object to allowing Con Edison to run its overhead transmission lines for the Cornwall project through their respective townships.

In its exceptions Philipstown points out that the project would produce savings of at least $12,000,000 annually over any possible alternative and suggests that the basic question in the case should be recast to read, "How far can this transmission line be brought underground and still leave the project economically feasible?" Answering its own question, it says that the Commission should order the lines placed underground through the entire town of Philipstown. As the examiner notes, however, there would be no justice in having the line placed underground as it passes through one jurisdiction or community and overhead through the others. Indeed, such a conclusion, in the absence of some clear and compelling reason therefor, would be patently discriminatory.

An estimate of the extremely high additional costs involved in running an entirely underground cable from the terminus of the submarine cable either to Millwood or to an intersection with the Indian Point right-of-way has been set out earlier. An underground line for the 10 miles from the Cornwall East Switching Station to the point adjacent to the Carmel substation where the line would intersect the Pleasant Valley to Millwood right-of-way would alone add more than $30,000,000 to the cost of the project and would still not provide comparable relief for Yorktown.

It must be recognized that overhead high voltage transmission lines are a fact of life in today's world in which the demands for electric power are constantly growing. Considerations of air pollution as well as economy dictate that in the future even more than in the past electric generating sources must be built at a distance from metropolitan centers, necessitating transmission hauls to markets. We do not mean to minimize the problems associated with overhead transmission lines traversing populous areas or cutting a swath through areas of natural beauty. There is a great public interest in the additional research which is badly needed to accelerate the rate of progress in developing economical underground transmission lines. At present, however, the cost of underground transmission lines at high voltages (and extra high voltages) is still enormous, and the differential as compared with overhead construction is prohibitive except for short distances. The Commission is convinced that to require underground transmission for this entire project would dissipate its economic benefits for power consumers with little commensurate public gain. In this age of electricity, overhead high voltage transmission lines, particularly in rural areas, will continue to be a necessary part of the American scene for many years to come. We do not believe that there is any real dispute on this point and that our task on this aspect of the case is to minimize the adverse impact on the affected communities without destroying the economy of the project.

In summary we find that on the present record no satisfactory and sufficient reason has been shown why Con Edison and, in the final analysis, its consumers, should be required to absorb the extravagant additional costs entailed for more underground cable installation in view of the limited impact which the lines will have upon the area involved.

The Commission has been impressed by the arguments and evidence submitted by Yorktown and is concerned with the effect which the allowance of an additional width to the existing right-of-way through the town as proposed by staff would have on its inhabitants and upon its plans for future development. We are also aware of the necessity, under staff's proposal, for the running of the overhead transmission lines across state park lands.[14] To limit Con Edison to its existing right-of-way through Yorktown would add more than $8,000,000 to the cost of the project and make no provision for future expansion. Finally, it is apparent that the adoption of Con Edison's initially proposed route will have an effect on established residential communities within the Town of Cortlandt which has not been adequately developed in the record.

In our opinion the evidence which is presently in the record now before us does not permit the Commission to make the informed determination called for under Section 10(a) in regard to the specification of the route and amount of required right-of-way for the primary transmission lines. Of significant importance, in our opinion, is the absence in the record, or the inadequacy, of information in regard to Con Edison's future interconnection plans; its plans, if any, for upgrading existing transmission lines to higher voltages; and of its existing transmission line grid in this general area and its future plans. Without a thorough knowledge of this material and a more complete development of the various alternative routes for transmitting the Cornwall power, we cannot be certain that any of the present proposals provide the best solution for the transmission problem. Each of the present proposals contain important deficiencies which further study may well alleviate. We believe that the public interest requires, therefore, that this phase of the proceeding be reopened and that the case be remanded to an Examiner for the presentation of additional evidence on this subject and for the development of the best possible route for transmitting the Cornwall power. Accordingly, our order herein will provide for the holding of additional hearings on this issue and for the presentation of any evidence as may be relevant thereto. Pending our final decision thereon, no route for the overhead transmission facilities beyond Nelsonville will be specified.[15] It is our hope that Con Edison and the staff will use the additional time made available by our present decision to good advantage to reexamine completely their transmission line proposals and to present the route most in accord with the public interest. Such proposal, or proposals, should be planned so as to avoid crossing state park lands and minimize scenic impairment and economic losses.

Our decision not to license any particular transmission line route at this time has no effect upon our approval of the license for the remainder of the project works, which we are satisfied are desirable in the public interest. This will not delay the initiation of construction in the powerhouse, tunnel and upper reservoir areas of the project.

---

[14] As planned, staff's proposed route would have passed over privately held land between two separate sections of the Clarence Fahnestock Memorial State Park in the Town of Putnam Valley. Con Edison, in its brief in opposition to the exceptions of the parties to the initial decision, reports that since the close of the record this intermediate parcel has been sold by the owners for use as state park lands and that title vested in New York State on August 31, 1964. Our specification of this route would require Con Edison to obtain an easement of approximately 7,000 feet in length and to a width of 250 feet over these state lands.

[15] The question of what transmission facilities should be included in the license, and the description thereof, has been deferred in other cases. See, for example, *Idaho Power Co.*, project No. 1971, *et al.*, Opinion and Order Issuing License, Opinion No. 283, 14 FPC 55, 79, 82; *affirmed* 237 F. 2d 777 (CADC-1956); cert. denied 353 U.S. 924; Order Further Amending License (approving transmission facilities), 21 FPC 361, 22 FPC 1001, 24 FPC 37, 1066, 29 FPC 404. *Power Authority of the State of New York*, Project No. 2216, Order Issuing License, 18 FPC 344, 19 FPC 186; Order Approving Transmission Line, 20 FPC 823; *City of Seattle, Washington*, Project No. 2144, 26 FPC 54, rehearing denied 26 FPC 463, *Affirmed sub nom. P.U.D. No. 1 of Pend Oreille County, Washington* v. *F.P.C.*, 308 F. 2d 318 (CADC-1962), cert. denied, 372 U.S. 908, rehearing denied, 372 U.S. 956.

V

OTHER ISSUES

Protection of Fish

Applicant plans to install fish screens on the relocated railroad trestle to exclude fish from the project intake structures. The design of the proposed fish screens has been submitted to the Fish and Wildlife Service of the United States Department of the Interior and to the New York State Conservation Department, a body which is responsible for the fish and wildlife protection activities of the State of New York. The Fish and Wildlife Service indicated that its major concern in connection with the project lay in the possibility that fish might be sucked into the intake when the plant is pumping water to the reservoir. It stated: "Screens or other devices to prevent the fish from being carried into the pumps should be installed. The applicant, the United States Fish and Wildlife Service, and the Division of Fish and Game of the New York State Conservation Department should cooperate in the design of the required fish screen or exclusion device. The applicant recognizes the need for a fish-screening device and has had experience with its Indian Point intake facilities. The fish-screening device should be constructed simultaneously with other project features."

The Fish and Wildlife Service suggested that any license issued for the project include adequate provisions to remedy any presently unforeseen or unaccounted for circumstance occurring after the plant begins operation which produces an unwarranted impact on existing fish or wildlife resources. The Secretary of the New York State Water Resources Commission, which, among other members, includes the head of the New York State Conservation Department, testified that the Commission was not generally opposed to the development of the project proposed by Con Edison. In regard to the fish protective facilities he stated:

> Relative to the preservation and enhancement of fisheries resources, it is requested that the applicant be required to provide assurances that adequate barrier facilities will be installed and maintained at the intake works to prevent the loss of fish.
>
> The applicant has had plans for a fish barrier screen prepared. Technical staff members of the Conservation Department's Division of Fish and Game have reviewed these plans and they appear to be adequate to prevent loss of adult fish of the species concerned. In our opinion the possibility still exists that extensive losses of eggs and/or young of valuable species might occur after installation of the proposed screening devices. Therefore, we request you to require the applicant to take full responsibility for making needed practicable additions, improvement, or alterations if investigations disclose inadequacies of devices installed for fish screening purposes.

The question of whether operation of the proposed project would have an adverse effect on the fish resources of the Hudson River was explored during the hearing. Dr. Alfred Perlmutter, an Associate Professor of Biology at New York University School of Graduate Studies and an outstanding ichthyologist, testified on the fish problem and stated that in his opinion the Cornwall project would not serve as an attraction for fish and that its operation would have no appreciable effect on fish, fish larvae, or fish eggs. He indicated, however, that actual operating experience might show that a screen mesh smaller than planned would prove preferable. During cross-examination he distinguished the situation at Indian Point, where a high temperature differential and a river dock constitute attractions for the fish, from that which would be present at the Cornwall plant where there would be little temperature variation and no physical structure to attract the fish to the vicinity of the powerhouse.[16]

It would appear that the facilities now planned for inclusion in the project should be adequate to assure suitable fish protection. However, in view of the comments submitted by the Fish and Wildlife Service of the Department of the Interior and the New York State Conservation Department, and in compliance with their desires as the agencies charged with the responsibility of fish and wildlife resource protection, we are including a special condition in the license to require the company to consult with the U.S. Fish and Wildlife Service and the New York Conservation Department, Division of Fish and Game in the final design of the fish screening facility; to construct, operate and maintain such facility in a satisfactory manner; to pay for the costs of evaluation studies to determine any effect of the project on the Hudson River fishery; and to make any reasonable modification of the screens in the interest of protecting fish which the Commission may direct.

Standard Article 16 (Form L-4, revised June 1, 1964, 32 FPC 839) dealing, among other things, with the future modification of project structures for fish and wildlife protection after notice and opportunity for hearing, is included in all licenses issued by the Commission for projects affecting navigable waters.[17] Since it affords better protection for fish and wildlife than the provision recommended by the examiner, it will be substituted for Article 39 in the examiner's initial decision. This Article 16 will afford ample opportunity to interested Federal and state agencies to bring before the Commission any suggestions for reasonable modifications in the protective devices as may become apparent from actual experience in the operations of the Cornwall plant and for the holding of a hearing at which all such interested agencies, as well as others, whether parties to this proceeding or not, may participate. Should any modifications to the project or its operations be shown to be necessary and desirable, consistent with the purpose of the project and the provisions of the Federal Power Act, they may and will be ordered by this Commission in the exercise of its continuing responsibilities under the Act. We may note that the substitution of Standard Article 16 for Article 39 is in accordance with a request by the U.S. Department of the Interior.

In January 1965, after the time which had been allowed for the filing of petitions to intervene and subsequent to the hearings, the initial decision and the oral argument, a number of petitions to reopen the proceeding for the submission of additional evidence regarding the fish problem were received. These petitioners contended that studies of the fish resources of the Hudson River not in record show that the project will adversely affect fish, particularly fish larvae and fish eggs. These petitions have been denied as untimely. In keeping with our continuing authority under the license to require the applicant to take all necessary measures for the protection of fish, however, and in view of the opportunity offered by the reopening of the record on the transmission phase of the project, we find that it is in the public interest to provide also at that time an opportunity for interested persons to submit additional evidence concerning the design of the fish protection devices. Our order herein so provides.

---

[16] Dr. Perlmutter stated that he is currently engaged in a study of a fish-kill problem which has arisen since the beginning of operations at the Indian Point nuclear plant, an activity which is outside the jurisdiction of this Commission.

[17] Article 16 of Form L-4 reads as follows: "The Licensee shall, for the conservation, and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance and operation of such facilities and comply with such reasonable modifications of the project structures and operation as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing and upon findings based on substantial evidence that such facilities and modifications are necessary and desirable, reasonably consistent with the primary purpose of the project, and consistent with the provisions of the Act."

Safety Considerations

The safety of the proposed dikes was considered at great length during the hearing and the uncontradicted evidence supports a conclusion that the dikes will be completely safe. The largest dike in volume of construction materials will be dike No. 1 which will be 2,000 feet in length and located on the west side of the reservoir. This dike would have its foundation approximately 900 feet above sea level and its crest at an elevation 1,170 feet above sea level. The longest dike (No. 3), located in the northeast sector of the reservoir will be about 2,700 feet in length and will be the second largest dike in volume. We are requiring that the elevation of the dike facing Clove Creek be at least 3 feet lower than the other dikes so that it can serve as an overflow spillway in the event of an emergency. As brought out in the examiner's decision, various automatic and semi-automatic devices will be installed at Con Edison's Energy Control Center in New York City, the Indian Point Control Station and at the project itself to give ample warning of any overfilling of the reservoir and to automatically shut down the pumping units.

Although the examiner found that there will be no danger of seepage of any significant quantities of Hudson River water out of the project reservoir, he required, and Con Edison has agreed to, the installation of observation wells in the vicinity of the dikes to measure any seepage that may occur, and to sample the water in wells, ponds and streams in the area, all with a view to safeguarding the quality of the local water supplies. The decision also requires applicant to take appropriate measures to correct any conditions of significant seepage, and, if necessary, to compensate any parties who may be damaged thereby. This condition will be retained in the license issued in the order accompanying this decision.

Cornwall's Water Supply

The continued adequacy and even improvement in the water supply of the Village of Cornwall is assured in the project's plans. As brought out by the examiner, an engineering firm with long experience in community water supply was hired to conduct studies looking to the Village's existing and reasonably foreseeable water requirements and to plan the redevelopment of its water system. The plans prepared on the basis of these studies have been approved by the governing council of the Village and by the New York State Water Resources Commission. The construction cost of these plans, estimated to be $2,000,000 or more, will be borne exclusively by Con Edison as compensation for the loss of one of the five reservoirs now supplying water to the Village. Furthermore, the filtration system which is to be installed in connection with the utilization of the water taken from the Catskill Aqueduct and which is included in the water supply program costs to be paid for by the company will, for the first time, permit boating and fishing in the remaining Village reservoirs, thereby increasing the available recreational opportunities.

Recreation Plans

Article 38 of the presiding examiner's license order requires applicant to file with the Commission, within one year from the date of issuance of the license, a "statement of the steps which have been taken and which are planned" with respect to means for "the preservation of the natural beauty and improvement of the recreational opportunities of the project area." Article 38 as thus drafted is not in accord with our Order No. 260-A[18] and a statement of steps taken and planned would not be sufficient to carry out our expressed intention. In Order No. 260-A we stated: "It is the Commission's intent, whenever practical and in the public interest, to condition the issuance of future licenses upon acceptance of the plan for recreational use specified therein by the Commission." Article 38 will therefore be revised to require the filing by Con Edison of its proposed recreational use plan for approval by the Commission.

In reviewing the proposed recreational use plan which, as required by our regulations, is to be developed by the applicant in consultation with appropriate State and local officials, the Commission will be interested in observing and weighing the extent of the recreational facilities intended by the applicant to be provided at its own expense as an integral part of the project costs. These plans should be drafted with a view to increasing the recreational potential not only in the powerhouse area but, of equal importance, in the area surrounding the upper reservoir and the lands to be acquired in its vicinity. The location of camping, picnicking and sanitary facilities, as well as any access roads and trails to be provided, should be set out.

The record does not indicate whether the power plant will be open to the public. The project will be of great technical and scientific interest and we shall expect Con Edison to make such provision as practical for public visitation of this facility, perhaps by the scheduling of regularly conducted tours.

Effect on Navigation

The Commission has been informed by the office of the Chief of Engineers, Department of the Army, that the Cornwall project as planned by the applicant is satisfactory as far as the interests of navigation are concerned. It recommends that certain standard provisions in the interest of navigation be included in the license. The suggested provisions are incorporated in the license herein granted.

VI

CONCLUSION AND FINDINGS

In arriving at its judgments herein the Commission has given full weight to the public interest consistent with our obligations under Sections 4(e) and 10(a) of the Federal Power Act and with an awareness that the needs of our expanding population for adequate and reliable electric service must be reconciled with the need to conserve our dwindling areas of unspoiled natural beauty for this and future generations to enjoy.

We have considered with sympathy the protests, which in substance say there must be another source of power as good or better. The record shows, however, that the Cornwall project has large advantages over any other method of meeting the applicant's need for additional peaking power. We do not say that all pumped storage power projects should or will be approved. On the contrary, as we have indicated, where the public interest requires it, the license application will be denied. Here the impact of the project on the surrounding area is minimal while the need for electricity from this economical and dependable source is great.

---

[18] *License Applications—Revision of Regulation*, Docket No. R-233, Order No. 260-A, amending section 4.41 of Regulations Under the Federal Power Act, issued April 18, 1963, 29 FPC 777, 28 F.R. 4092; Order No. 292, clarifying section 4.41, Exhibit K, Recreation Development Plans, issued January 8, 1965, 33 FPC 32.

We therefore conclude that on balance the issuance of a license appropriately conditioned to avoid unnecessary harm to the landscape or to other public or private interests, for the construction, operation and maintenance by Con Edison of the Cornwall project, is desirable and justified in the overall public interest and that such license should be granted.

On the basis of this record we are unable to determine the exact route the transmission line beyond Nelsonville should follow and accordingly this phase of the project is remanded for further evidence. In addition, further testimony regarding the design of fish protective facilities may be considered at that time.

The Commission further finds:

(1) Consolidated Edison Company of New York, Inc., applicant in this proceeding, is a corporation organized and existing under and by virtue of the laws of the State of New York, and said applicant has submitted satisfactory evidence of compliance with all applicable laws of that State to the extent necessary to effectuate the purposes of the application herein and of the license to be issued in this proceeding.

(2) The application filed on January 29, 1963, and thereafter amended on September 13, 1963, is made for a license under the Federal Power Act which would authorize the construction, operation and maintenance of a hydroelectric development to be known as the Cornwall Pumped Storage Project, Project No. 2338, which would be located on the Hudson River approximately 40 miles north of the City of New York, in part in the towns of Cornwall and Highlands, respectively, in Orange County, New York (known as the Cornwall site) and appurtenant project works including the necessary transmission facilities.

(3) The proposed Cornwall hydroelectric generating plant would be located in and along the Hudson River, a navigable water of the United States.

(4) Appropriate public notice was given of the instant application. There is no competing application on file with the Commission for a license for a hydroelectric development in the Cornwall reach of the Hudson River.

(5) The issuance of a license for the Cornwall project as hereafter provided will not affect a Government dam or the development of any water resources for public purposes which should be undertaken by the United States.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charges is 2,400,000 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project for the cost of administration of Part I of the Federal Power Act is reasonable as hereinafter fixed and specified.

(7) The present and the future electric energy requirements of applicant's present and potential consumers require the construction and operation of the proposed project.

(8) The project proposed and as authorized in the order issued concurrently herewith is feasible from an engineering and economic standpoint and the construction and operation thereof in the manner and for the purposes proposed by applicant as authorized herein are in the public interest.

(9) The project as proposed, with an initial capability of 2,000,000 kilowatts, but with provision for future expansion to at least 3,000,000 kilowatts, will be best adapted to a comprehensive plan for improving and developing the Cornwall reach of the Hudson River for all purposes.

(10) The project works as proposed and as authorized in the order hereto attached will be safe and stable.

(11) The project upper reservoir would be located some two miles from, and west of, the Hudson River and the project powerhouse would be located along and immediately adjacent to the Hudson River in the Village of Cornwall, which is immediately north of the Hudson Highlands.

(12) The construction of the project upper reservoir would not adversely affect, to any significant extent, the natural beauty, the historical significance, or the recreational opportunities of the area in which it would be situated, but the recreational advantages of such area would be enhanced thereby.

(13) The dike facing Clove Creek and forming part of the project upper reservoir should be at least three feet lower than the other dikes.

(14) There is no danger of seepage of any significant quantities of water out of the project reservoir, but applicant should install observation wells in the immediate vicinity of the project reservoir dikes to measure any seepage that does occur, sample the water in wells, ponds, and streams in the area before and after construction, and take appropriate measures to correct any conditions of significant seepage and, if necessary, respond in damages to parties who may be damaged thereby.

(15) The Hudson Highlands is an area of unusual natural beauty, great historical and artistic significance and of exceptional recreational opportunities. There are important historical remains and reconstructions at points along the Hudson River from Newburgh to West Point, but no such remains or reconstructions are in the immediate vicinity of the project works.

(16) The construction of the project power plant would not adversely affect, to any significant extent, the natural beauty, the historical significance, or the recreational opportunities of the area in which such plant would be situated.

(17) The view of the project power plant from the north would not be significant as the river in this area is wide and the structures would be low and designed to blend with the natural rock of the mountainside.

(18) Project power would be generated at 17,000 volts and transformed to 345,000 volts for transmission at the switchyard appurtenant to the powerhouse.

(19) The power would be transmitted across the Hudson River by four submarine cables (comprising two 345 kv circuits) approximately 4,200 feet in length; two additional submarine conduits will be constructed to meet future needs.

(20) Underground cables of essentially the same design as used for the river crossing would extend on the eastern shore of the river from the end of the submarine cables a distance of 1.6 miles to the Cornwall East Switching Station at Nelsonville.

(21) The Cornwall East Switching Station at Nelsonville would consist of station terminals, pressure control equipment, breakers and associated switches, lightning arresters, metering devices and terminal structures for the 345 kilovolt overhead circuits.

(22) To transmit the power which would be generated at the Cornwall project, applicant should construct and operate as parts of the project within the meaning of Section 3(11) of the Federal Power Act, a 345 kilovolt double circuit overhead transmission line on a right-of-way, the location and width to be subsequently determined, which would extend from the Cornwall East Switching Station at Nelsonville to a point of interconnection with applicant's transmission line grid.

(23) It is necessary and appropriate in the administration of the Federal Power Act that a decision in regard to the remainder of the project transmission facilities to be included in the license be deferred; the proceeding should be reopened and the case remanded for the taking of additional evidence as limited by our conclusions herein.

(24) The project will not adversely affect the fish resources of the Hudson River provided adequate protective facilities are installed. It appears that the facilities now planned for inclusion are adequate. However, opportunity should be made available at the reopened proceeding for interested persons and agencies to introduce such additional evidence as they may desire on the design of the fish protective facilities.

(25) The steps taken and proposed by applicant to preserve aesthetic, historical and recreational values, including but not limited to the expenditure of substantial sums for submarine and underground cable, satisfy the public interest standard embodied in Section 10(a) of the Federal Power Act.

(26) Applicant has assumed the responsibility for the expenditure of substantial sums in aid of the expansion of recreational resources and the preservation of scenic values.

(27) The water resources of the Village of Cornwall would be augmented and improved as a result of the project.

(28) As a result of the project, lands of the Palisades Interstate Park Commission in the watershed behind Storm King Mountain will be augmented by at least 150 acres.

(29) Subject to the terms and conditions hereinafter imposed, the proposed project is best adapted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water power development and for other beneficial public uses, including recreational purposes.

(30) The Cornwall project is desirable and justified in the public interest for the purpose of developing the Hudson River for the use or benefit of interstate or foreign commerce. If the licensee cannot acquire by contract or pledge the properties required for the Cornwall project or the right to use or damage the lands or properties of others necessary to the construction, maintenance or operation of the Cornwall project, including the project transmission line, it may acquire the same by the exercise of the right of eminent domain in the District Court of the United States for the Southern District of New York or in the courts of the State of New York.

(31) The exceptions to the examiner's decision, except as herein granted, should be denied; the examiner's decision, to the extent not inconsistent herewith, should be adopted as part of this Opinion and Order.

The Commission orders:

(A) A license hereby is issued to Consolidated Edison Company of New York, Inc., hereinafter referred to as Licensee, under Section 4(e) of the Federal Power Act for a period of 50 years, effective as of the first day of the month in which acknowledgment of acceptance thereof is filed with the Commission by Licensee, for the construction, operation and maintenance of Project No. 2338, to be known as the Cornwall Pumped Storage Project, located primarily in the Village of Cornwall and Towns of Cornwall and Highlands, New York, and in and on the Hudson River, a navigable water of the United States and affecting the interest of interstate and foreign commerce, subject to the terms and conditions of the Act which is incorporated herein by reference as part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2338 shall consist of:

(i) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or in-

terests therein are owned or held by the Licensee or by the United States; the general location of such project area being shown and described by certain exhibits which formed part of the application for license, or amendment thereof, and which are designated and described as follows:

Hearing Exhibit No.	
15	Sections & Details (exclusive of Typical Dike Detail).
18	General Map.
19	Site Plan.
20	Plan-Penstocks and Station.
21	Cross Section of Penstock and Station
22A	Cornwall East Switching Station, Modified Plan.
23A	Cornwall East Switching Station, Modified Elevation.
36	Proposed Dike Design (Dike 3 Facing Clove Creek).
38	Proposed Dike Crest, Dikes 1, 2, 4 and 5.
39	Proposed Dike Crest & Toe Detail—Dike 3.
License Exhibit No.	
M	General Description of Equipment in three sheets.

(ii) The Cornwall project, with provisions for future enlargement, will be a high-head pumped storage development located on the Hudson River approximately 40 miles north of New York City, in part of the Village of Cornwall and in part in the Towns of Cornwall and Highlands, and in Orange, Putnam and Westchester Counties, New York. A portion of the power tunnels and the penstock manifold, will occupy subsurface lands within the Palisades Interstate Park but the powerhouse will be so located that the surface facilities will be outside the Park.

The project will consist of an upper reservoir, a tunnel leading from the upper reservoir to a pumping-generating station on the river bank, primary transmission lines and other auxiliary facilities. The station will house reversible pump-turbine units. The units will alternately pump water from the river to the upper reservoir utilizing off-peak energy from other system sources, and generate power during peak hours by the flow of water from the reservoir back through the units to the river. The pumping generating cycle will be repeated daily, occurring with general regularity on week days and with modified regularity on weekends when system loads are lighter. When not pumping or generating on the peak, the units may be kept on the line at light loading to provide an immediately available large source of reserve capacity to assure the stability of the licensee's system and interconnected utility systems.

The *Upper Reservoir* will be created in the Hudson Highlands by forming a basin through the construction of five dikes, and will have available storage capacity of about 25,000 acre-feet between elevations 1,160 and 1,000 feet. The dikes will be constructed initially so that they may be raised in the future to provide for a maximum water surface elevation of 1,210 feet.

The *Lower Reservoir* will be the natural Hudson River which, at Cornwall, is essentially an estuary of the Atlantic Ocean with semidiurnal tides and widths in excess of a mile. This reservoir has unlimited storage capacity with water surface at about zero feet elevation.

The *Water Passage*, initially, will consist of a concrete lined tunnel, through granite, 40 feet inside diameter and about 10,000 feet long, a concrete lined subsurface manifold, and eight steel lined penstocks reinforced to accommodate a maximum surface elevation in the upper reservoir of 1,210 feet. Water from the upper reservoir will be conveyed through the tunnel, thence through the manifold, and through the penstocks to the pumping-generating station.

(C) This license is also subject to the terms and conditions set forth in Form L-4 (Revised June 1, 1964) entitled "Terms and Conditions of License for Unconstructed Project Affecting Navigable Waters of the United States" (32 FPC 839), which terms and conditions, designated as Articles 1 through 29, are attached hereto and made a part hereof, and subject to the following special conditions set forth herein as additional articles:

Article 30. The Licensee shall install a water measuring weir below the dike which extends between Mt. Misery and White Horse Mountain and shall measure at least once each week during the first year of operations the seepage flow and turbidity, if any. The measurements shall be recorded, plotted, and reported to the Commission each three months for the first year of operations and thereafter when requested by the Commission or its authorized representative.

Article 31. The Licensee shall employ three qualified independent consultants for the purpose of making recommendations as to the measures to be taken with respect to the foundations of the upper reservoir dikes, the general reservoir area and the final design and specifications for the dikes and to advise Licensee as to other protective measures. A report and recommendations of the consultants shall be submitted for Commission consideration when the Licensee files revised Exhibits J and L for Commission approval. The Commission reserves the right to require the Licensee to take appropriate measures to assure the water tightness of the upper reservoir and other protective measures deemed necessary for the Project.

Article 32. The designs of the tunnel intake, and of the crest and toe of the dike facing Clove Creek, shall be based on hydraulic model studies and the crest of this dike shall be at least three feet lower in elevation than the other dikes.

Article 33. The Licensee shall submit in accordance with the Commission's rules and regulations revised Exhibits J and L and M showing the final designs of the project works and the Licensee shall not begin construction of the project structures until the Commission has approved such exhibits.

Article 34. The Licensee shall submit for Commission approval Exhibits F and K prepared in accordance with the Commission's Rules and Regulations, within two years from the effective date of this license.

Article 35. The Licensee shall design the overhead transmission facilities to accommodate the initial transmission of 2,000,000 kilowatts of power and the future transmission of at least 3,000,000 kilowatts of power. The Commission expressly reserves the right to determine at a later date the question of what transmission lines and appurtenant facilities beyond Nelsonville shall be covered in this license and included as part of the project works.

Article 36. The Licensee shall cooperate with the appropriate town and State park officials concerned and shall file with the Commission for its approval, and with the aforementioned officials, for their information, plans of the transmission facilities of the project as approved herein from the powerhouse to the East Cornwall Switching Station at Nelsonville and for the transmission lines beyond Nelsonville as shall later be approved, including provisions for the ultimate capacity of at least 3,000,000 kilowatts, and shall not begin construction of the initial transmission line facilities until the Commission has approved such plans. These plans shall describe the boundaries of the right-of-way by metes and bounds. Nothing in this article shall be construed to prohibit the Licensee from acquiring lands, rights-of-way and any other necessary permits and approval prior to the approval by the Commission of the final plans for the transmission facilities of the project, nor shall it be construed as approval by the Commission of any such acquisitions; provided, however, that no right of eminent domain shall be exercised by the Licensee in regard to the acquisition of lands necessary for the transmission line right-of-way unless and until the plans herein required shall have been filed with and approved by the Commission.

Article 37. The Licensee, after consultation with the United States Fish and Wildlife Service and the Fish and Game Division of the New York Conservation Department, (1) shall construct, operate and maintain or shall arrange for the construction, operation and maintenance of a fish screening facility at the relocated railroad trestle, (2) shall make or pay the cost of making post-construction evaluation studies to determine the extent of any effect of the project on the Hudson River fishery resources, and (3) shall make any needed modification of the screening facility, as may be ordered by the Commission on its own motion or upon recommendations by the United States Fish and Wildlife Service and the Division of Fish and Game of the New York State Conservation Department and subject to the further hearing as to the design of these facilities.

Article 38. The Licensee shall within one year from the date of issuance of the license, file with the Commission for approval its proposed recreational plan including its plan for the preservation and improvement of the scenic beauty of the project area. The plan shall be prepared after consultation with appropriate Federal, State and local agencies, and shall include improvements which may be provided by others in addition to the improvements the Licensee plans to provide.

Article 39. The Licensee shall pay to the United States the following annual charge:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations in effect from time to time. As herein authorized, the installed capacity for such purposes is 2,400,000 horsepower.

(D) The exhibits designed and described in paragraph (B) above are hereby approved as part of the license herein issued to the extent therein indicated.

(E) No expansion of the Cornwall Pumped Storage Project beyond the presently licensed maximum peak generating capacity of 2,000,000 kilowatts shall be authorized without the issuance of a public notice of such proposed increase and the granting of an opportunity for hearing thereon.

(F) The proceeding shall be reopened and the case remanded to an Examiner of the Commission for the introduction of additional evidence in regard solely to the overhead transmission facilities beyond Nelsonville and the design of the fish protective facilities of the project. Thereafter the license as now issued will be amended in accordance with our determination made thereon.

(G) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by the Federal Power Act, particularly Sections 4(e), 10(a) and 308 thereof, and the Commission's Rules of Practice and Procedure, a further public hearing shall be held in this proceeding commencing on May 4, 1965, at 10 a.m. (EDST) in a Commission hearing room in Washington, D.C. under the direction of an Examiner to be appointed by the Chief Examiner of the Commission, for the receipt of additional evidence, both oral and written, addressed to the determination of the best route for the overhead transmission lines to be included in the license issued for the Cornwall Pumped Storage Project and to the design of the fish protective facilities of the project. Petitions to intervene in the reopened proceeding, limited to the two issues aforesaid, may be submitted by persons not presently parties to the proceeding until and including April 16, 1965; thereafter no further petitions to intervene shall be allowed. The examiner shall conduct such hearing with all reasonable dispatch and may, at his discretion, provide for the filing of briefs addressed to these issues. Following the compilation of an appropriate record the examiner shall certify the record so made directly to the Commission, without rendering an intermediate decision thereon. No additional evidence or argument beyond that herein provided will be permitted.

(H) The examiner's decision, to the extent not inconsistent herewith, is hereby adopted as part of this Opinion and Order.

(I) Except as herein granted, the exceptions to the examiner's decision are hereby denied.

(J) This order shall become final thirty (30) days from the date of its issuance unless application for rehearing shall be filed as provided by Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgement of the acceptance of this license, it shall be signed for the Licensee and returned to the Commission within sixty (60) days from the date of issuance of this order.

Commissioner Ross, *concurring in part* and *dissenting in part.*

Ross, *Commissioner, concurring in part and dissenting in part:*

Any project licensed by this Commission must stand the test set forth under Section 10(a) of the Federal Power Act, namely, that it is, in the judgment of the Commission, best adapted to a comprehensive plan for improving the waterway: (1) for the use or benefit of interstate or foreign commerce, (2) for the improvement and utilization of water power development, and (3) for other beneficial public uses, including recreational purposes. It should be clear from the outset that Congress had in mind that a waterway should be considered as a unit and that no single purpose is primarily controlling. In its determination, the Commission is required to balance and judge the various interests in the overall public good.

Bearing in mind the importance of this case to New York and its environs as well as to the Nation, we must inquire what the essential elements are that should be considered in determining whether this project with its transmission lines is best adapted to the development of the Hudson Valley. First of all, the company must show that there is need for the power of the kind proposed. Secondly, the utility has the burden of showing that there is not a more reasonable alternative source. The project must be both economic and financially feasible. The Company must also show that it has complied generally with the State laws, see Section 9(b). Furthermore, the project must be safe so as not to endanger life, health and property.

Even if a company proves that the project is safe, economic and needed, the Commission, despite its critics to the contrary, must then appraise the project in relationship to the overall interest of the waterway. This means a weighing of aesthetics and a weighing of recreational interests, including fish and wildlife.[1] It also means considering the real inconvenience suffered by citizens affected by the project and its transmission lines. It means weighing the impact of the project upon local, county and state development and zoning plans. All these matters and more are included in the term "other beneficial uses." Should a power project despoil the area where it would be located and through which its lines traverse, the interests of the area and the nation are not advanced.

---

[1] See, for example: *Namekagon Hydro Co.* v. *F.P.C.*, 216 F. 2d 509; *Pacific Northwest Power Co.*, Opinion No. 418, 31 FPC 247; *PUD No. 1 of Skamania County*, Project No. 2199, Opinion No. 440, issued July 30, 1964, 32 FPC 444.

The Cornwall pumped storage project illustrates very vividly the problems that confront both the utilities of this nation and the public which it seeks to serve. At the one extreme, the public utilities of this country and sometimes this Commission have been influenced by one dominant desire, the most comprehensive *power* development possible. This paramount consideration has only been modified by the demand of particular pressure groups. The utilities faced with growing competition by other energy sources, such as natural gas have sought to minimize to the extent humanly possible any lessening of the most economic, materialistically speaking, development. To the utilities (as in this case, see testimony of Harland Forbes, tr. p. 509, and Waring, tr. p. 529) the threat faced by underground transmission in any one project involves the threat of all transmission lines being forced underground. Colored by this negative thinking, utilities all across the country are fighting what is to them a deadly serious war. Aware of the growing concern of the public, the utilities now, as in the past, seek to withhold their future transmission plans from the public and their experts, the local and regional planning authorities. This was done here. When questioned, the utilities cite the fact that speculators will move in and that local bodies of course cannot understand the complexities of developing vast interstate regional networks. (*The State ex rel. Kearns* v. *Ohio Power Co.*, 127 N.E. 2d 394.)

Parenthetically speaking, this state of affairs undoubtedly will bring about legislation requiring FPC certification of important extra high voltage lines—and in the not too distant future. This is so not only for the reasons mentioned above but also to insure that the number of such facilities are not unnecessarily duplicated and that the most extensive use of the facilities built and to be built is encouraged.

Contrasted with this approach is the extreme approach of those who seek to maintain the highest aesthetic standard without due regard to other pressing needs of the nation. To them any change in our natural environment is a monument to our materialistic selfishness. This group uniformly opposes the construction of required new generating facilities, irrespective of type, location or of the efforts of the utility to modify objectionable features. A few individuals who have the means and resources to enjoy nature in its most primeval state seek to impose their desires upon the many who might prefer a more abundant life, heretofore a dream but not a reality.

This case represents actually elements of both extremes though modified by serious attempts by both sides to reach a satisfactory compromise. To its credit, the Applicant has sought to minimize the aesthetic objections by trying to design the project so it can be accommodated with its surroundings. Landscaping, going under the river, and underground to a distant substation are substantial improvements. On the other hand, many of those who wish to preserve the area recognize that the project will not now materially affect this historic vista along the river. Where do we go from here? The Company states any further expenditures will cause them to abandon the project. What does the record show? It is one of the most complete records ever developed before this Commission so far as aesthetics are concerned. In other respects it is most deficient.

Briefly, for reasons to follow, I believe that the case should be remanded for further hearing before an Examiner with his decision to be waived, to allow immediate consideration by the Commission. Such hearing would be for the purpose of developing whether there are alternative sources of purchased peaking power available, whether the operation of this project will in fact have a substantial impact on the Hudson River fishing resource (contrasted to the majority who only allow testimony as to the adequacy of the proposed protective fish facilities), and lastly, in determining the best possible right of way, the latest information on the costs of underground construction together with the feasibility of going underground along the present railroad right of way. In no event, in my opinion, should the Commission undertake to decide this case before the State of New York has had a reasonable opportunity to resolve it. In this connection, I feel the Commission should withhold a decision until the 1st of March 1966.

In deciding to advise a limited remand of this nature, I, of course, am aware that the Applicant alleges that this project is urgently needed *now* and undoubtedly, I presume it would urge that such a remand would in effect kill the project. Invariably, when approval is being sought of a regulatory agency, the Applicant seeks to influence the decision by claiming that without an immediate decision the world is coming to an end. The regulator must weigh the consequences of delay against the overriding necessity of insuring a full presentation of the facts. Frequently, the urge to make haste may in fact be an excuse to prevent a serious scrutiny or more likely to forestall additional objections. A regulated utility and its regulators live in a glass house and its primary consideration should always be to see that a public need can be demonstrated on the record. A less than full and adequate record can only lead to a serious undermining of the public's confidence in both. In my opinion, if a project is in fact good, no one or combination of objectors can destroy it. In this case, additional delay of up to a year will not vitally affect the consumers of New York. The record shows that only three units will be ready in 1967 and the remaining five in 1968. The record further shows that the plant won't be dependable until 1970–1971, that is to say, the full load cannot be absorbed until then. Moreover, this is based on the load of the Southeastern New York companies, not just Con. Ed. Had Con. Ed. proposed its project at a time when it was not interconnected, the situation would have been different. However, a relatively short time ago, Con. Ed. finally interconnected with its neighboring utilities and makes much of that fact in this record. In my judgment, such a remand would not be unduly prejudicial to Con. Ed.

Since I am urging a limited remand only, I think it is appropriate to comment on the status of the issues not remanded. First of all, I feel without doubt that the applicant has shown a need for a peaking service. They have also proved beyond question that this project standing by itself has many unique advantages. In fact, aesthetics aside, it is peculiarly adaptable to the Applicant's system. It has unusual intangible advantages, such as providing increased reliability of power supply at critical periods. In fact, it is hard for me to understand why the officers of this Company, considering their glowing testimony as to the merits of the project, would testify when asked about additional underground that they had "no intention of going further than that."

I also feel that the Company has satisfactorily compared the alternative of gas turbines to the latter's disadvantage.

Another alternative mentioned on the record is a modern large scale thermal station located in New York. After studying the proposed economic exhibits and testimony fully, I am convinced that the economic advantages of a pumped storage project with its other intangible factors at this time outweigh the thermal plant.

It also seems clear that there are no other alternative pumped storage projects in the State of New York which would be as economic.

In proposing the remand, I am suggesting that I am satisfied after reading the transcript that the project is well designed and safe. I am convinced from the evidence that there is no danger to the area from seepage. As much as any project can be said to be safe, this project passes the test. The water supply, I believe, is not endangered and, in my opinion, it would be useless to protract this phase of the case.

In discussing a remand I have deliberately excluded the necessity of reopening the record to allow more aesthetic evidence to be introduced. In my opinion, the record is complete. Much has been said about the "Hudson Highlands" and all of it was needed. I personally am impressed with the fact that barring the gantry crane, the pumped storage project after landscaping will be compatible with the area. I admit that the reservoir itself will not be a thing of beauty. The daily drawdowns will leave a large partly dry pit, with unsightly banks, surrounded by a fence, not a particularly serene sight to the hiker in the Black Forest. To say it will be covered by foliage is somewhat of an understatement. In truth, it will be conspicuous. However, weighing this against the benefits, I feel it should be something the hiker must bear. On the whole, I feel a 2000 MW project should be built, assuming the evidence as to the remanded issues doesn't develop something differently. In fact, I would urge that, at least as to this one project, the Legislature of the State of New York, or Congress for that matter, make this project an exception, but no other if this area is to be set aside for park purposes.

Feeling this way, it might be surprising to some that I nevertheless desire a postponement of one year of any licensing. This would seem to be an abdication of our responsibility under the Federal Power Act. This is not really the case. Under Section 10(a) we must consider "other beneficial public uses, including recreation. Of necessity, such uses do not lend themselves to ready economic tests. They involve weighing intangibles, a hard job at its best. Expertise in such matters involves a true consideration of the direction that this Nation of ours is going to undertake. It goes beyond an intimate knowledge of economics and takes into consideration what we desire in maintaining a quality of life for ourselves and for those that follow us. As an agency undertaking to carry out a function of Congress, that is, licensing hydro projects, we should be careful to consider the social factors that Congress would weigh.

In this case, it appears obvious that had this area of the "Hudson Highlands" been declared a State or National park, that is, had the people in the area already spoken, we probably would have listened and might well have refused to license it. The delicate way we are treating Fahnestock State Park is an example. There should be absolutely no reluctance on our part to pause a minute and let the public speak. Whenever big government or big business, particularly those with the government's right to condemn granted it, seek to impose their will on the local community or region, one must proceed with due caution. The mere fact that a lethargic region has failed to recognize the inherent beauty and life giving qualities of an area until it is almost too late shouldn't mean we can't give them a last chance. It is impossible for me to honestly represent that I have the same scale of values of those of the people of New York. I believe I am duly responsive to the intangible factors of life and further believe that considering those factors a 2000 MW pumped storage plant will not destroy them. At the same time, I am willing to have my judgment put to the test and I don't feel this is the abdication to which I spoke.

In any event, let this case be a lesson to the Nation. The Potomacs and the Hudsons can't wait. They will be saved only by the ever increasing interests of those who, again I say, seek to maintain our quality of life. Postponements such as I suggest here cannot always be the order of the day. However, they are necessary, I believe, in the Commission's early groping to find standards by which it can equitably balance the traditional economic advantages of a proposed power project with the intangible values, such as aesthetics, fish and wildlife, and recreation.

There is another aspect of the project with which I disagree with my colleagues. They have seen fit to authorize a 2000 MW plant with provision for ultimate 3000 MW after due notice and hearing. It is to be noted, however, that the Applicant from the beginning to the end has consistently opposed enlarging the project. Exhibit 43. The majority say in response that "don't worry, we really are only authorizing a 2000 MW plant." Then why finding 9: "The project as proposed, with an initial capability of 2,000,000 kilowatts, but with provision for future expansion to at least 3,000,000 kilowatts, will be best adapted to a comprehensive plan for improving and developing the Cornwall reach of the Hudson River for all purposes." Obviously, it must be there for a purpose. In my opinion, it is done for two reasons. First, it was helpful in justifying the expenditure of at least an additional $1,800,000 for strengthening the dikes and penstocks. Secondly, and most important, such a finding is necessary in order to justify the originally proposed 250′ right of way from Cornwall substation to an existing right of way. So long as the possibility of a 3000 MW plant exists, the utility is bound to seek and the Commission is more than likely to grant the larger right of way, thereby making the transmission right of way more objectionable than ever. In my opinion, the project in no event should be enlarged beyond 2000 MW. First of all, all the real balancing of interests has been done on the basis of 2000 MW. The Applicant is unalterably opposed to the increase in the size and has introduced evidence in support of its position which is most persuasive. Con. Ed. pointed out (Ex. 43) that the improvement in the technology of electric power supply has been dramatically rapid over the past few years, and it therefore could not speculate that additional pumped storage capacity would be the most economic source of peaking power at a time when the additional 1000 MW might be usable. Con. Ed. further pointed out that the effect of a 3000 MW plant from a scenic standpoint cannot be weighed at this time.

In addition, a 3000 MW project would require, without doubt, an almost continuous construction program on Storm King for the next ten years or more. It would substantially increase the height of the dikes and increase the size of the power house, which is said now to be "relatively inconspicuous." It would have an unforeseen impact on fish and generally be inimical to the aesthetics of the area.

Staff is to be congratulated for bringing to our attention the most comprehensive power development. It is our duty to weigh the advantages of increasing the size against the other considerations. I feel that these other considerations dictate a 2000 MW plant. If this is the right answer, let us say so and plan accordingly. The public is entitled to know and should not be kept dangling. If it is only 2000 MW, then money can be saved and additional transmission rights of way forgotten. Proper planning can ensue.

This leaves one remaining alternative, however, which despite argument to the contrary was not developed. At the oral argument, the attorney for the Applicant was asked, "Talking about interties, * * *, have you explored the possibility of purchasing peak power from other systems through interconnections?" The answer was, "Yes, sir, the testimony in the record is that nothing can be done which will take the place of this project." I think two things are significant. First, the answer is not truly responsive and secondly, a search of the record discloses that in reply to a similar question, Mr. Waring also failed to truly respond, see Tr. p. 39. He described the status of the company's interconnections but failed to indicate that they had explored the possibility of seeking purchased peaking power, although he alluded to negotiations for Canadian power, Tr. p. 40.

In my opinion, the only true alternative that would likely be as economic as the proposed project would be purchased peaking power. There are two possibly differing sources: one would be purchasing pumped storage or normal hydro peaking which may be in the process of development in New England; or secondly, purchasing steam peaking power from new large scale thermal stations in Pennsylvania or in Appalachia. I am aware, of course, that other things being equal, it is better to have its source close to New York. However, I do feel the public is entitled to know on the record that no stone has been left unturned. How much better it would be if the public is clearly advised under oath and cross examination that there truly is no alternative? The thread running through this case has been that the applicant is entitled to a license upon making a prima facie case. My own personal regulatory philosophy compels me to reject this approach. This Commission of its own motion, should always seek to insure that a full and adequate record is presented to it. A regulatory commission can insure continuing confidence in its decisions only when it has used its staff and its own expertise in a manner not possible for the uninformed and poorly financed public. With our intimate knowledge of other systems and to a lesser extent of their plans, it should be possible to resolve all doubts as to alternative sources. This may have been done but the record doesn't speak. Let it do so.

As to the transmission right of way for this project, I heartedly applaud the majority's decision to remand that portion of the case. In light of the remand, and particularly in light of the record and the comments of my colleagues, I find it necessary to comment on this point.

As I have mentioned, the tactics of the Applicant were obviously dictated by the precedential effect of underground transmission. As Chairman Forbes stated, he would rather abandon the project rather than go underground on such an unwarranted scale. He further stated, "(there is) no more reason to put these lines underground, apart from the Hudson River area, than there would be to put underground hundreds of miles of other overhead transmission and distribution lines that are owned by the Company." In my opinion, this begs the question. I feel and apparently the majority feels that the "Hudson Highlands" is an area of unique beauty. This means more than the river itself. It encompasses the adjoining historic and scenic area so vividly described in the record. If economic, I feel serious consideration should be given to extending the underground portion to possibly either Carmel or to the PJM Line. This would not mean that every Con. Ed. line must go underground. Rather it is a recognition of the distinctive aesthetic feature of the Hudson Highland region as a whole.

By economic, I do not suggest that the costs should be comparable to the costs of overhead transmission lines. Rather the additional costs must be balanced against the damage, actual and intangible to the area involved. By additional costs, I mean the reasonably predictable costs expected of the industry at the time of construction, not costs measured by work done in a dissimilar area. As the Examiner pointed out, Staff had serious reservations as to the reliability of the Company estimates. I do too. Too often, when a utility doesn't wish to do something, it becomes prohibitively expensive. Underground EHV transmission, a phase of the electrical industry too long forgotten, is on its way to becoming practicable. The public is demanding it and the public who actually pay the bills are willing to accept the costs of it when there are offsetting advantages.

Whether the utilities like it or not, they will increasingly be subjected to decisions such as *Town of Hamilton* v. *Department of Public Utilities*, 190 N.E. 2d 545. In that case the court stated:

> The record as we have noted, contains evidence of higher costs of underground construction. It is not our function, however, to determine what these costs might be or what the department means by "greatly increased costs" or to speculate what the department would find them to be or their effect on consumer rates, or what in its view is the adverse effect on property values which the decision appears to recognize. A high cost of placing the entire segment underground would not dispose of the contention as to the center of the town. Findings are required in respect of such matters.
>
> The findings should be specific as to the cost of underground installation through the civic center of Hamilton, the effect of overhead wires on that part of the town for its present and its planned uses, the safety of overhead wires in congested areas, and the probable effect of overhead construction on property values, and also on general welfare factors, having in mind that such considerations may be of high importance in long range planning and that an adverse effect thereon may not be reflected immediately in lower property valuations. We recognize that the weight of relevant factors is different when determining the effect of the line in open areas. The department should, nevertheless, also make specific findings as to the cost of underground construction in the more rural areas through which the two segments of the line below Ipswich Junction will pass, and the effect in such areas of overhead wires. The determination of the balance of public interest and convenience may properly be made only after the opposing factors have thus been expressly found.

The electrical industry presently has a study underway at Cornell. A record in which the results of the studies completed thus far are clearly disclosed would be most helpful. Since there seems to be an air of mystery as to this subject, I would recommend that the best experts available in the manufacturing industry be sought to testify. Our National Power Survey, a monument in most respects is not too helpful. Such costs as are set forth are essentially averages of undetermined projects, undetermined because the industry was fearful to have them quoted back directly. The problem of underground EHV transmission is not dissimilar with the problem of D/C transmission that is facing the electrical industry. In that case, it was said that it was a long way off. What has to be done to get the industry moving?

In this particular case, a reasonable alternative to overhead transmission may well be to construct a further portion underground. I am convinced in my own mind that the only figures $85,000,000 or $99,000,000 are excessive. If that were the true figure, I would give up the ghost. However, let the record show what the outside experts would estimate that the job would cost. Let us explore costs of underground along the railroad right of way. Also, let us remember that the annual costs of underground, not the total costs of underground, should be compared with the annual benefits of the pumped storage project. Further, let us not overbuild the transmission system. Let us build it to fit this project, not a 3000 MW or 4000 MW plant, or for a future project on Breakneck Mountain.

Lastly, but far from being the least important, in remanding the case for further hearing, I would require that the hearing specifically resolve the question arising from the Applicant's fish expert when he testified, "that the last study made on the Hudson River was 1938 and it hasn't been done since."

Tr. P. 159. In view of the fact that the Applicant's whole case, insofar as the impact of this project upon the fishery resource of the Hudson River, stems from this one witness, I believe it is crucial to reopen the record to determine whether subsequent studies have been made and their conclusions as they might affect this issue. It is generally well known that such a study has been made. In fact, the Staff of the Commission has analyzed it but such analysis has not been subjected to cross examination. It may well be that the ultimate answer will not be changed. If so, at least the air will be cleared and those who are so tremendously concerned about the fishery resource will have a fair opportunity to question the validity of the conclusions upon which Finding 24 is based. The suggestion of the majority to reopen the case to determine the adequacy of the fish protective facilities presupposes that no substantial damage will result to the fishery resource because of the operation of the plant. If by operation of the plant, there are no fish to protect with its facilities, it would be an empty victory. The continued existence of this resource is one of the primary issues in this case and I, for one, am not willing to base an ultimate conclusion upon testimony about which serious doubts have arisen. I would be hopeful that all parties might be able to resolve, upon remand, the extent to which this area is a spawning ground for anadromous fish, the time of the spawning runs, and particularly the effect of the discharges upon possible temperature variations for both a 2000 MW plant and 3000 MW plant.

INITIAL DECISION
OF THE PRESIDING EXAMINER UPON APPLICATION FOR A LICENSE FOR A HYDROELECTRIC PROJECT

(Issued July 31, 1964)

MARSH, *Presiding Examiner:*

History of the Proceeding

This proceeding is upon the application under Section 4(e) of the Federal Power Act filed by Consolidated Edison Company of New York, Inc. (Applicant or Con Edison), on January 29, 1963, for a license to authorize the construction, operation and maintenance of certain proposed project works for the development, transmission and utilization of power known as the Cornwall Pumped-Storage Project, Project No. 2338, which would be located on the Hudson River in the Village of Cornwall and Towns of Cornwall and Highlands, Orange County, New York.

Notice that such an application had been filed with the Federal Power Commission was issued by its Secretary on March 12, 1963. That notice, which provided that protests and petitions to intervene might be filed on or before April 29, 1963, was published in the Federal Register on March 20, 1963, and also appeared (once each week for four weeks) in a newspaper of general circulation (the *Independent Republican of Goshen*, Village of Goshen) published in Orange County, New York.

On September 13, 1963, Applicant submitted an amendment to the application filed on January 29, 1963, to reflect minor changes in the plans therein proposed for the project.

On January 22, 1964, the Commission issued an order providing for a public hearing in this proceeding and prescribing the procedure to be adhered to in that hearing. After reciting that the Commission had received communications from many individuals and organizations expressing their interest in this matter and raising questions concerning, among other things, the effect of the project upon the natural beauty of the area, the water supply of local communities, and the fish and wildlife resources of the area, the order provided that at the hearing, Applicant would go forward with a general statement by a competent witness as to its plans with respect to the proposed project, the safety provisions thereof, and specific comments upon the various subjects of public interest evidenced by the communications referred to above. The order required, too, that Applicant make available competent witnesses to answer, with respect to its plans, questions which might be asked by the Staff of the Commission, or any intervening party, and any questions which the Presiding Examiner might direct to the witnesses on behalf of other interested individuals, groups or agencies, the answers to which, in his opinion, might be of assistance to the Commission in its further consideration of the application.

The notice further provided that: "At the close of this phase of the proceedings, the Presiding Examiner shall adjourn the proceedings until further order of the Commission."

Pursuant to that order, which was published in the Federal Register and issued to the parties and interested persons of record, and to states and other governmental authorities deemed to have an official interest in the proceeding, a hearing was held beginning on February 25 and concluding February 26, 1964. There were in attendance representatives of the Applicant, the Village of Cornwall, New York, Scenic Hudson Preservation Conference,[1] the New York State Water Resources Commission, Philipstown Citizens Association, and Town of Cortlandt, New York, Constitution Island Association of West Point, Ralph E. Ogden (an individual property owner), Garrison Fish and Game Club, Putnam County Historical Society and a group of citizens gathered together under the name of "Save America's Natural Beauty." In the course of these sessions, everyone wishing to be heard was permitted to testify or make a statement of position, or both, and to ask of the other participants such questions as he saw fit. In accordance with the notice, also, at the conclusion of that phase of the proceeding, the Presiding Examiner filed with the Commission a report on the hearing so held.

Thereafter, on March 13, 1964, Applicant filed a motion to terminate the hearings in this proceeding. Answers in opposition to that motion were filed by Scenic Hudson Preservation Conference (Scenic Hudson) and Philipstown Citizens Association (Philipstown). On March 27, 1964, the Commission issued an order denying Applicant's motion to terminate the hearings and, among other things, set the matter down for further hearing, directing that the Presiding Examiner convene a prehearing conference prior to the date fixed for the hearing proper to determine the procedures to be followed at such hearing. Pursuant to that order, a prehearing conference was held on April 7, 1964, at which everyone present was permitted to state his position and otherwise to participate fully. Pursuant to the ruling of the Presiding Examiner made at that conference, the hearing reconvened on May 4, 1964, and after seven days of hearing was concluded on May 12, 1964.

Although the notice of March 12, 1963, fixed April 29, 1963, as the final date for the filing of petitions to intervene and in protest, no such petitions or protests had been filed prior to the issuance by the Commission of the order of

---

[1] Not to be confused with the Hudson River Conservation Society. Scenic Hudson is an association of a number of groups and organizations "interested in the protection of certain sections of the Hudson River Valley which it believes are unique from a scenic, historical and recreational standpoint * * *." The conference began its activities as such in late January 1964, soon after the Commission's notice of January 24, 1964, was issued.

January 22, 1964. Subsequent to the latter date, petitions to intervene were filed by the Scenic Hudson Preservation Conference, the Village of Cornwall, New York (Cornwall), the Town of Cortlandt, New York (Cortlandt), the Philipstown Citizens Association, the Town of Yorktown, New York, and the Builders Institute of Westchester and Putnam Counties, Inc. Although they were filed tardily, all of these petitions were granted by the Commission. At the session of the hearing held on May 4, 1964, counsel for the Town of Putnam Valley appeared, announced that he proposed to file a petition to intervene, and was permitted to participate. On May 8, 1964, such a petition was filed and on June 4, 1964, it was granted. It is stated in the Staff's initial brief that the Town of Yorktown and the Builders Institute have advised the Commission of their desire to withdraw their petitions for leave to intervene.

Prior to and during the course of the hearings herein, a large number of individuals and groups of individuals who did not appear personally, and were not otherwise represented at such hearings, filed with the Commission statements of their opinions and views with respect to the granting of the license sought herein. Many of such communications favored the granting of the license sought while many opposed the issuance. No effort has been made to tabulate these communications for or against the application so that it is not known where the preponderance may rest. However, cognizance is taken and consideration will have been given herein to all of the issues raised in those communications and to the contentions and arguments of the communicants with respect thereto.

At the hearings, all of those who had sought the privilege of doing so were permitted to participate. Since the conclusion of the hearing, main and reply briefs have been filed by the Applicant, the Village of Cornwall, the Scenic Hudson Preservation Conference, and the Staff of the Federal Power Commission. Although it did not file an initial brief, Philipstown filed a reply brief. The matter is now ready for decision.

Questions for Decision

Section 10(a) of the Federal Power Act provides in pertinent part that:

> All licenses issued under this Part shall be on the following conditions:
>
> (a) That the project adopted, * * * shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water power development, and for other beneficial public uses, including recreational purposes; * * *.

In the matter of *Southern California Edison Company*, 8 FPC 364, 385, the Commission said:

> In addition to the authority contained in section 4(e), the provisions of section 10(a) of the act require us to find before issuing a license that the Company's water power project is best adapted to a comprehensive plan for the improvement and utilization of water power development, and most important of all, we are required to find that the project is best adapted for all other beneficial public uses including recreational purposes.
>
> It is our duty to give consideration to the benefits to be obtained by the public in utilizing the waters available for all purposes and to consider the burdens placed on each class of the public by conflicting uses. Under section 10(a) we must consider the recreational interests and the conditions

requested by the Secretary of Agriculture. Our responsibility under section 10(a) of the act is to protect the public interest.

In this proceeding, the Federal Power Commission is called upon to pass on an application for a license for a pumped-storage hydroelectric project. That the Commission has the power and authority to make the necessary determination and to issue such a license appears to be conceded by the Applicant and concurred in by other participants in the proceeding. Actually, a number of issues frequently arising in hydroelectric license project proceedings were not raised here. For example, the engineering feasibility of the proposed project, its economic feasibility, Applicant's ability to finance the proposed construction, the adequacy of the project to perform the function for which it is intended and the need by Con Edison for ever-expanding sources of supply of energy are not questioned or contested by the other participants. With respect to these subjects, Applicant has made an adequate showing, and no evidence to the contrary has been offered by anyone.

The safety of the project structures and the provisions therefor are normally matters for consideration. The impact of the project proposed upon the recreational aspects of the area, including fish and wildlife resources, must always be weighed in reaching a conclusion as to whether the project is best adapted to a comprehensive plan for improving or developing waterway.

In *Namekagon Hydro Company*, 12 FPC 203, 206, the Commission said:

> Recreational values are given consideration in every license application before the Commission. However, the Commission realizes that in many cases where unique and most special types of recreation are encountered a dollar evaluation is inadequate as the public interest must be considered and it cannot be evaluated adequately only in dollars and cents. Unique and most special types of recreation have been preserved in the public interest at the cost of loss of power which is definitely ascertainable in monetary value * * *.
>
> Citing *Southern California Edison Company, supra.*

In this instance, the safety of the project structures and the provisions therefor and the impact of the proposed project upon the fish and wildlife resources of the area were specifically made subjects for consideration by the Commission's order of January 22, 1964. In addition, that order emphasizes issues not usually present in license project proceedings but which achieve unique importance herein, namely, "the effect of the project upon the natural beauty of the area [and] the water supply of local communities." As will more particularly hereinafter appear another unique issue in this proceeding is the impact of the construction and maintenance of the proposed project on the economy of the area, including tax revenues and employment. These seem clearly subjects for consideration in the effort to determine the effect of the proposed project upon the public interests.

Position of the Parties

It is the Staff's position, as evidenced by its brief and the findings proposed therein, that (1) the project works as proposed, with an initial capacity of 2 million kilowatts but with provisions for future expansion to at least 3 million kilowatts, would be best adapted to the comprehensive plan for improving or developing this reach of the Hudson River for all purposes, (2) the project works, including the reservoir, dikes,[2] tunnel and plant as proposed will be safe and stable and will not significantly affect, but in some aspects will enhance, local scenic and related values, (3) the project works proposed for construction on the west side of the river would be feasible from an engineering and economic standpoint, but that the Applicant should be required to follow the transmission line route which the Staff proposed as the alternative.

---

[2] Provided that all dike crests except the one facing Clove Creek are raised to at least elevation 1,173.0 feet. *Infra*, p. 476.

The Village of Cornwall urges the granting of the license sought herein for the reasons that (1) the project would be sound and safe from an engineering standpoint and feasible from all standpoints, (2) would greatly improve Cornwall's water supply, (3) would provide additional recreational benefits, (4) would improve the present scenic beauty of the area and, most importantly, (5) the project works would be of great economic benefit to the village and to the area.

While not denying Con Edison's need for additional sources of energy, or the economic and engineering feasibility of the proposed project, or that otherwise the project would be best adapted to a comprehensive plan for the development of this reach of the river, Scenic Hudson contends that:

> (1) Con Edison's peaking requirements can and should be provided by other means.
>
> (2) Denial of the Cornwall license application is required because of the importance of the scenic and historical resources of the area.
>
> (3) The proposed project would have an adverse effect upon the recreational resources of the area, in that, among other things, leakage from the proposed reservoir would pollute the streams, lakes, ponds and wells in the drainage area of that reservoir.

Philipstown is not opposed to the pumped-storage project in Cornwall as proposed by the Applicant, nor is it against bringing the power produced there into New York City through Philipstown, but it contends that the transmission lines through the town should be underground. Each of the foregoing contentions will be given appropriate consideration in this decision.

The Applicant and the Proposed Project

The Applicant is a corporation organized and existing under the laws of the State of New York. The corporation is a public utility serving with electricity the Boroughs of Richmond, Brooklyn, Queens, Manhattan, the Bronx and the greater part of Westchester County, New York. It does not presently serve directly any part of Putnam County, the county in which Philipstown is located.

Growing Need for Electricity

Despite the fact that no one questions the fact that Con Edison's markets are expanding and that increased supplies of electricity are constantly needed, consideration of the public interests involved in this proceeding seems to require a brief appraisal of those factors.

Con Edison's kilowatt hour sales for 1963 increased 6.5% over 1962, the suburban Westchester area, where most customers live in individual houses, showing the largest increase. The Company's system peak loads are growing at the rate of approximately 300 megawatts per year. A new all-time electric system peak demand of 5,105,000 kilowatts occurred on July 29, 1963. This was 5.2% above the previous annual peak. On July 2, 1963, a new 24-hour send out record, 7.9% higher than the previous annual 24-hour send out, was established. Applicant's anticipated peak load in 1968 is estimated at 6,700 megawatts. The uncontroverted testimony is that Con Edison's present capacity, plus that presently under construction, will be inadequate to supply the peak loads Con Edison expects to experience by the summer of 1967.

That any substantial interruption in electric service to Con Edison's service area would practically paralyze this most densely populated community need hardly be said, and, it is obviously of the utmost importance that there be available for the use of electric consumers therein a sufficient, and an entirely dependable, supply of electricity. It is, then, the responsibility of Con Edison's management, and clearly a heavy one as well, to devote its attention to the changing and growing characteristics of its electric load, to the reliability and dependability of its service and to the various means by which the Company can meet the ever increasing load demands of its customers, and in the most economical manner.

There are no conventional hydroelectric powerplant sites available to Con Edison. To meet its growing demands for energy, the Applicant has installed, and is installing, large, highly efficient, thermal generating units. Currently, the Company is installing a one-million-kilowatt thermal unit, has constructed a nuclear generating plant, and is engaged in a major program of interconnection with other electric systems in upstate New York, in New England, New Jersey, and Pennsylvania.

The evidence establishes that there are only four practical ways by which Con Edison can meet, promptly and dependably, the expanding demands of its customers. Applicant must construct transmission lines to bring power into New York City from sources outside the area, build additional conventional thermal plants within the metropolitan area, build nuclear powerplants within the area, or construct pumped-storage hydroelectric projects where sites for that purpose are available.

The Proposed Project

The proposed Cornwall project would be a high head pumped-storage development, (the largest in the world), located on the Hudson River approximately 40 miles north of New York City, in part in the Village of Cornwall and in part in the Towns of Cornwall and Highlands, Orange County, New York. The project would consist of an upper and lower reservoir interconnected by a power tunnel, a generating plant and other auxiliary facilities, and transmission facilities which would convey the power generated at the project power plant to a point of interconnection with Applicant's integrated electric distribution system in, or in the environs of, the City of New York.

The project upper reservoir would be situated in a naturally formed basin near the crest of the Hudson Highlands. The construction of five dikes or dams, only one of which would be of substantial size, would create a reservoir having a surface area of about 240 acres and an available storage capacity of about 25,000 acre feet between elevations 1160 and 1000 feet above sea level. The natural Hudson River, which, at the proposed plant site is essentially an estuary of the Atlantic Ocean with semidiurnal tides and a width of a mile or more at that point, would constitute the lower reservoir. This reservoir would have, of course, an unlimited storage capacity with a water surface at about zero feet elevation above sea level. The upper reservoir would require no spillway for the purpose of providing discharge capacity for rainfall runoff since the water shed is practically the reservoir itself.

The water passage would consist of a concrete-lined tunnel, through granite, 40 feet inside diameter and about 10,000 feet long, a concrete-lined subsurface manifold, and eight steel-lined penstocks. Water from the upper reservoir would be conveyed through the tunnel, thence through the manifold, and through the penstocks to the pumping-generating station.

The pumping-generating station would consist of an outdoor type station with reversible pump-turbine and motor-generating units and other auxiliary facilities. Eight pumping-generating units each rated at 225,000 kilowatts but capable of generating about 250,000 kilowatts under a gross head of about 1,060 feet would be installed.

The units would generally act as motor-pumps and use off-peak energy furnished from non-project and steam-electric or other facilities to pump water from the Hudson River to the upper reservoir. The pumps would be provided with very reliable means of automatic shutdown when the water surface exceeds elevation 1160 feet. (*Infra*, p. 476). During on-peak hours, the units would reverse direction of rotation and act as turbine-generators furnishing energy to the load by releasing water from the upper reservoir through the turbines to the Hudson River. This cycle of operation would be repeated daily when the plant is in operation and advantage of weekend storage could also be utilized. The plant could also be kept idle, or partially loaded or spinning without water, as a power reserve for the Applicant's, and other, loads in the area.

When generating, the station would discharge between about 25,000 and 27,000 cfs, and when pumping, it would draw between 14,000 and 22,000 cfs.

The transformation from motor-generator voltage of about 17 kv to 345 kvs would be by transformers located at the station and the power would be delivered by submarine cable from the west to the eastern shore of the Hudson River.

About 1.6 miles of underground cable, interconnected to the submarine cable would extend to a switching station which would be located on the east side of the river and about three-fourths of a mile inland therefrom. At that point, the underground cable would connect with two 345 kilovolt overhead transmission lines which, as Con Edison proposes, would run south about 23.4 miles to the Applicant's existing Millwood substation, and thence south about 19 miles on an existing right-of-way to Applicant's new Sprain Brook substation.

No lands or reservations of the United States would be affected by the proposed project.

Estimated Cost

The estimated cost of the project, including transmission facilities to the point of connection with Con Edison's other facilities, would be $161,420,000 consisting of the pumped-storage works (including step-up transformers and switch yard at the plant) costing $129,400,000, and a two-circuit 345 kilovolt transmission line from the Cornwall pumped-storage plant to a new Sprain Brook substation, the cost of which was estimated at $32,020,000. The latter also would include the submarine river crossing and the underground section of line between the easterly terminus of the submarine cable and the Cornwall east switching station. A comparison of annual costs as computed by the Staff and the Company shows relatively little difference. The Staff's cost, however, reflects standard procedure for such purposes and as the Staff proposes, the latter's figures, $21½ million, will be accepted.

Economic Feasibility

The estimated cost of the project as proposed, including transmission to the point of connection to Applicant's system, is $89.70 per kilowatt. The Company made an economic evaluation of the project by comparison with the costs of a conventional single-reheat thermal plant of the same capacity comprising two 900 megawatt units installed in New York City. The cost of a thermal plant of 1800 megawatt capacity so installed was estimated at $125 per kilowatt or a total of $225,000,000.

In the relative evaluation of the pumped-storage and a thermal plant, consideration was given to the fact that the pumped-storage plant would be a peak-load facility with generation limited to peak-load periods. Generation at the project was estimated at 650,000 megawatt hours for a typical year, resulting in an annual capacity factor of 4.1%. The comparable thermal plant would supply initially both base-load and peak-load energy and was estimated to have, in the early years, a generated output of 10,650,000 megawatt hours and an annual capacity factor of 67.5%. The thermal plant was, therefore, credited with full replacement cost for base-load generation of 10,000,000 megawatt hours at a system fuel cost of 3.4 mills per kilowatt hour.

The cost of pumping energy was estimated on the basis of supply from Applicant's thermal plants at an approximate incremental cost of 2.6 mills per kilowatt hour which is equivalent to approximately 3.9 mills per kilowatt hour of hydrogeneration. On this basis, there was indicated an economic advantage for the pumped-storage project of $8,192,000 per year or $4.55 per kilowatt hour.

The transfer of capacity from hot reserve status to cold standby status which Cornwall would make possible would result in estimated combined operating and maintenance savings amounting to $2,850,000 per year and the net fuel savings is estimated at $1,130,000.

The total monetary advantage of Cornwall would be, assuming a capacity of 1,800 megawatts, about $12,000,000.

The Staff, too, submitted an economic feasibility study. It agreed in general with Applicant's study except that it assumed a dependable capacity of 2,000 megawatts rather than 1,800 megawatts. Thus the Staff arrives at a net annual value of power of $15,663,000.

No evidence to the contrary was presented and there is no doubt as to the economic advantage of the Cornwall project.

However, the Staff has undertaken a study of the economics of future units, and based thereon, the conclusion was reached that it is reasonable to provide for the future expansion of the plant to 3,000 megawatts. The net annual benefits for the 1,000 megawatt increment would amount to about $4,270,000. Thus, from the Cornwall project with 3,000 megawatts, the net annual benefits would amount to about $19,933,000.

Advantages of the Cornwall Project

Basically, the Cornwall project would be used to supply daytime peak loads, but it would also provide emergency standby power. The most efficient and economical use of conventional steam construction is found in large thermal generating units. However, such a unit, or units, would not be as economical to meet Con Edison's peak requirements as would a pumped-storage plant because the installation cost per kilowatt for the former is higher and the capacity is not useful during the off-peak load periods. Excess capacity at Con Edison's thermal units can, though, be used economically to provide the power to operate the pumps at the Cornwall project during the night hours to fill the reservoir for use in the generation of electricity during the daytime on peak loads. This operational technique permits uniform, around-the-clock, operation of Con Edison's efficient large thermal units.

Electric service reliability, everywhere desirable, is probably more important in New York City than anywhere else in the world. But, although reliability is a matter of the greatest concern to Con Edison's management, thermal electric generating equipment is comparatively poor in this respect. Steam boilers operate at high temperatures and pressures and steam turbines at high speed and, accordingly, they are the source of a great deal of trouble. The testimony of Mr. Harland C. Forbes, Con Edison's board chairman, is that:

> During the past few days on our generating system in New York, due to troubles of various kinds, we had a total of about 2 million kilowatts of

generating capacity out of service at one time—about one-third of our entire generating capability.

Month after month, Con Edison has experienced outages in the order of 1,500 megawatts. The risks associated with the operation of thermal electric generation become greater as the size of the thermal generating units grow larger.

The testimony is that nuclear plants are not suited to meet peak-load purposes, that such plants are economically feasible only if quite large and when operated as part of a utility's base generation and that they must be operated at as high a capacity factor as possible.

The record discloses that the hydroelectric generating units which would be installed at Cornwall are simple, rugged devices which would operate at low speeds and would be well-nigh trouble proof. There would be no boilers or complicated auxiliary devices. Even as compared with other hydroelectric plants, Cornwall would be of superior dependability because it would not be subject to the vagaries of stream flow nor would its performance be restricted by temporary blockages of ice packs.

"From every point of view," Mr. Forbes testified, "it seems clear that the plant will represent the ultimate in reliability."

The testimony reveals that there are a few other sites of this nature which could be developed in the same general area but none of them appeared to have natural advantages to the same degree as Cornwall and none would seem to permit as large an economical power development as this project.

The use of Cornwall would permit Con Edison to load its thermal units at a slower rate than is currently practical and there would thus be minimized stack emissions normally arising from thermal units. This factor, together with the prospect of the wider use of electricity for space heating purposes made available by this plant for such purpose would seem to justify the expectation of substantial assistance in Con Edison's effort for the reduction of air pollution, an ever increasing problem in the metropolitan area.

Mr. Forbes testified further that in addition to the other advantages the availability of the Cornwall plant would enable the Company to assist neighboring utility companies far more effectively than it has in the past. As a result, he said, the assurance of electric service reliability resulting therefrom would be felt over a wide area to the lasting benefit of millions of electric customers.

Con Edison is already interconnected with the electric utility systems in New York State, including a recently installed 345 kilovolt tie line to Niagara Mohawk. Another such tie line with Public Service Electric and Gas Company of New Jersey has recently been placed in operation. Still another is under construction for a connection with Connecticut Light and Power Company and plans are well advanced for an interconnection with the Keystone Project. Con Edison has a verbal agreement with Central Hudson Gas & Electric Corporation which serves among others, The Town of Philipstown, to sell the latter a proportionate share of the Cornwall output, amounting to about 100,000 kilowatts. The availability and the dependability of the Cornwall plant would thus be helpful to those utilities interconnected with it.

Alternative Units Suggested by Scenic Hudson—Scenic Hudson does not deny Con Edison's need for the additional peaking and emergency capacity, nor that the Cornwall project would supply such electricity in the manner and with the degree of economy contemplated by the Applicant. Basically, this intervenor simply contends that the Cornwall project would impair the scenic and historical resources and would adversely affect the recreational resources of the area, and to meet the hypothesis that some impairment of these resources and some adverse effect thereon may be justified on the basis of the need for additional sources of power, Scenic Hudson insists that Con Edison's peaking requirements can and should be provided by other means.

After all, Scenic Hudson argues, the Applicant is now in its 80th year of operation and in its 142nd year of the existence of the company and its predecessors and up to this time it has been able to meet its peak-load requirements in one way or another. In this connection, this intervenor points to the several steps Con Edison has and is taking to provide the capacity which it needs. "The important factor, however," Scenic Hudson concludes, "is that the company is now meeting them and doing so without a plant such as that proposed at Cornwall."

Thus Scenic Hudson seems to contend that since Con Edison has managed up to this time in one way or another to meet its peak loads; seems to have been satisfying its peak requirements by using its less efficient steam generating facilities and by purchasing power from others; and is taking other steps to insure the availability of enough power for the needs of its customers, the Cornwall plant is not in and of itself necessary. In this context, a witness for this intervenor made a comparison of costs of a conventional single-reheat thermal plant such as the Applicant employed in its economic evaluation study with the unit costs of Cornwall pumped-storage plant and with the cost of three alternative potential peak-load plants, which, Scenic Hudson argues, "could be used in lieu of the Cornwall pumped-storage project." The alternatives on which Scenic Hudson secured information were (1) a gas turbine Reserve Power Plant which would be manufactured by General Electric Company, (2) a Ready Reserve Steam Turbine Power Plant by Babcock & Wilcox, and (3) a gas turbine Jet Power Plant by Pratt & Whitney Aircraft.

The General Electric gas turbine would cost $75.00 per kilowatt installed in New York, but this price does not include the cost of the site and its preparation, railway spur, cooling water, fire protection, natural gas pipeline with valves, etc., if natural gas were used as fuel, communication link for control, other communications, excavation for foundations, station grounding grid, liquid fuel unloading and storage facilities and high stack. The Babcock & Wilcox steam turbine would cost $71.00 per kilowatt installed in New York, but this price does not include the cost of the site and its improvements, buildings including equipment, liquid fuel, unloading and storage facilities and high stacks.

The Pratt & Whitney Aircraft jet plant would cost $64.00 per kilowatt. The record shows that this is a gas turbine unit. Perhaps six or seven of these units with 10 jet engines in each unit would be required to make available 1800 megawatt capacity. It would require 8 minutes to start each of those units and it is unlikely that all of them would be started simultaneously. Consequently, this type of engine is not suitable for spinning reserve on a continuing basis. The cost per kilowatt hour for power generated by such a unit would be, Scenic Hudson's witness conceded, "relatively high," possibly as much as 11.6 mills per kilowatt hour.

Furthermore, at the request of a representative of the Philipstown Citizens Association (who appeared and made a statement of that Association's position), a representative of Con Edison met with him and representatives of the Pratt & Whitney Company, the makers of one of the alternative power units considered above. At the conclusion of the conference the manufacturers' representatives announced that the Pratt & Whitney Aircraft Jet Power Unit discussed above cannot provide the same advantages as would the Cornwall project.

Scenic Hudson's witness was unwilling to identify the kind of peaking plant which might properly be used for the purpose of comparison, insisting that such a choice was the responsibility of the Applicant.

It should be noted that Scenic Hudson does not contend that any of these alternative units could be used in lieu of the Cornwall project. This intervenor's witness testified that he would not go so far as to say that the units he had suggested could not be used in lieu of Cornwall, but he conceded that none of them would be entirely suitable for supplying the spinning reserve desired at Cornwall.

Applicant's principal policy witness had testified that reliability of the source of power was a most important consideration to the Company in serving its large and densely populated service area. Availability, that is, the ability to place additional generation on the line promptly, is another very important consideration. The General Electric Company reserve power (gas turbine) unit cannot be run continuously on spinning reserve. The fuel cost for such an operation would be prohibitive. Neither is the Babcock & Wilcox Company ready reserve (steam turbine) unit suitable for this purpose.

In rebuttal, Con Edison's vice president testified that none of the three alternative units employed for comparative purposes by Scenic Hudson is comparable in any way with the unit advantages offered by the Cornwall pumped-storage project. None of the three could provide the instantaneous spinning reserve capacity which would be available at the Cornwall project. Nor would any of them provide the same degree of reliability and none would contribute to the improvement of the air pollution condition in New York City. The evidence is persuasive that in the absence of highly expensive construction or equipment these alternative units would produce greater problems of sound creation.

The evidence is quite convincing that the Cornwall project is superior in many important respects to any other type of plant suggested or discussed on the record in this proceeding, including the alternative units suggested by Scenic Hudson. Indeed, Cornwall's superiority over those units is so marked that unless some other more compelling reason appears, the public interest would seem to be best served by the issuance of the license sought herein.

Safety of Dikes—In the natural depression formed by White Horse Mountain, Mount Misery and surrounding ridges is presently a small reservoir which supplies part of the water service to the Village of Cornwall. The project reservoir would occupy this natural depression and since it would be considerably larger (and the water level higher) than the present reservoir, 5 dikes would have to be constructed between the several high points. These dikes were designed by a highly reputable and responsible engineering firm. The largest of them (Dike No. 3) would be located in the northeast sector of the reservoir; it would be about 2700 feet in length; and it would have its foundation at approximately 900 feet and its crest at elevation 1170 feet. The next longest dike (Dike No. 1) would be about 2000 feet in length and located on the west side of the reservoir.

Someone, presumably a resident of the area, has been quoted in a newspaper article as saying that the projected 250 foot dikes atop Mount Misery and White Horse Mountain are "so flimsy they could burst and flood the lush slopes and valleys with a billion gallons of sewage-polluted saline water pumped from the Hudson." No one came forward at the hearing with any such contention and there is no evidence in the record to support such a statement. In fact, all of the evidence is to the contrary. Not even Scenic Hudson makes such a contention.

Geological studies which included a large number of borings along the lines of the proposed dikes were made to test the soundness of their foundations. Based upon those borings and his otherwise knowledge of the geology of the area, a well-known and reputable geologist testified that although there were minor faults underlying some of the dikes, the project presented no geological problems of magnitude and the dikes, constructed as planned, would be absolutely safe. In fact, he said he thought they were "over-designed, over-safe."

A partner in a consulting firm with wide experience in the field of rock-fill dams called in by the designers reviewed the designs and testified with respect to the stability and the safety of the dikes. He said that he reviewed a geology report on the site, two reports on seismological surveys, the results of boring explorations at the site and in the border area for impervious soils, the results of soil tests and plans and drawings for the reservoir and dikes. He testified that on the basis of his experience with similar structures the sections of dikes proposed by the Applicant herein "are safe and highly conservative." Considering the excellent quality of rock in the foundations and the bottoms, he added, they will produce completely safe dikes if reasonable controls and precautions are provided. He recommended that devices be installed which would give ample warning of potential instability and permit corrective measures. Another witness, a consulting engineer, with long experience in the field of rock-fill dams, testified that the foundation conditions at the site, the quality of the available materials for constructing the dikes and the design all assure a safe structure.

The Staff of the Commission accepted the findings of Con Edison's geologists with respect to the adequacy of the dike foundations. A Staff witness testified that the slopes of the dikes were conservative for such rock-fill dams and that a review showed them to be safe against surface slides or major slides; that the core should be safe against piping based on using proper filtering zones between the core and shell materials.

It is recognized that provision must be made to assure that water pumped from the river would not overflow the crests of the dikes. First, it should be pointed out that the maximum water level of the reservoir would be 1160 feet while the minimum crest elevation of all dikes would be 1170 feet above sea level. The operation of the Cornwall project would be controlled from Con Edison's Indian Point Generating Station in Buchanan under schedules established by the Company's Energy Control Center in Manhattan. At the Center, water level indicators, emergency shutdown controls and indicators of the status of machines and loading would be provided. Indications from these devices would be transmitted over two separate circuits so as to insure that at least one circuit would be in service.

As a further precaution, two devices which would initiate automatic shutdown would be installed. To insure that these tripping circuits would always be ready, they would be monitored and the loss of continuity, if any, would be reported and the pumps shut down immediately. In addition, the pressure activated devices would be periodically tested.

The Company thought the dike design and the warning and control systems described above entirely adequate to protect against any risk of overtopping. The Staff, however, thought it desirable for the Company to raise four of the dikes a minimum of 3 feet to prevent overtopping, and that the crest and toe of the dike facing Clove Creek be reinforced. In deference to their suggestion, Con Edison had the dike designers prepare a design that would raise the crest of the four dikes by approximately 3½ feet and would provide for the reinforcement of the crest and toe of the Clove Creek dike. This change would require an additional expenditure of about $60,000.

While the provisions against overtopping which the Applicant proposes would seem to be entirely adequate to insure the safety of the dikes, the additional precautions recommended by the Staff appear to be well worth the additional cost. Accordingly, the license issued herein will contain such a condition.

Impact on Cornwall Water Supply—As has already been said, the construction of the project reservoir would cause the inundation of the present small reservoir lying within the depression formed by White Horse Mountain, Mount Misery, and the surrounding ridges. This reservoir is identified as the "upper" reservoir and is located on land owned in fee by the village. The village leases three other reservoirs from the Harvard Black Forest Corporation under a 99-year lease with an option to renew that lease for an additional 99 years.

The upper reservoir presently retains approximately 62 million gallons of water at its maximum level and it is an important component of the village's total supply system. The water from this reservoir is of a very high quality and its loss without adequate replacement would leave the village with a less than satisfactory water supply during the summer months. If, then, Con Edison is to acquire the village's upper reservoir and the adjacent properties for the purposes of the project storage reservoir, it is essential that the village develop alternative sources of water supply.

The village employed a consulting engineering firm with extensive experience in such matters to conduct investigations and studies into the municipality's existing and reasonably foreseeable water requirements and to plan the redevelopment of its water system in order to meet those requirements. The studies revealed that the construction of a new large reservoir within the drainage area would not be feasible and that the only practicable method of increasing capacity would be by the construction of a new larger dam at one of the lower ponds; the construction of a well field approximately 4 miles to the west of the center of the Village of Cornwall and the installation of a connection to New York City's Catskill Aqueduct which passes in the vicinity of the Village of Cornwall. The village does not presently have a filtration plant nor is filtration presently necessary with respect to the reservoir and well water. However, such a processing plant will be constructed for use in connection with water taken from the Catskill Aqueduct.

The senior partner of the consulting engineering firm testified that in his judgment the loss to the Village of Cornwall of its upper reservoir would not be detrimental to the village's water supply if the recommendations his firm had made to the village were carried out. In fact, he thought that the development he had proposed would insure to the village a more adequate supply of excellent water than it presently has and that the system would meet the village's needs for years to come.

The Trustees of the Village of Cornwall have approved the program recommended by the engineering firm, and they submitted an application to the New York State Water Resources Commission for approval thereof. Hearings were held before the Water Resources Commission on that application on February 27 and March 19 and 20, 1964. On May 7, 1964, the Water Resources Commission issued its decision in which it determined and decided that:

> First. * * *.
>
> Second. That the plans proposed are justified by public necessity.
>
> Third. That said plans provide for the proper and safe construction of all work connected therewith.
>
> Fourth. That said plans provide for the proper protection of the supply and the watershed from contamination and for the proper treatment of such supply.
>
> Fifth. That said plans are just and equitable to the other municipalities and civil divisions of the State affected thereby and to the inhabitants thereof, particular consideration being given to their present and future necessities for sources of water supply.

> Sixth. That said plans make fair and equitable provisions for the determination and payment of any and all legal damages to persons and property, both direct and indirect, which will result from the execution of said plans or the acquiring of said lands.

It is perfectly clear that the plan for the development of other and additional sources of supply of water from Cornwall although entailing the loss to the village of the upper reservoir would not adversely affect the interests of the residents of the village but, on the contrary, would constitute a substantial improvement in the municipality's water supply situation, and would, therefore, be greatly in the public interest.

Impact on Scenic, Historical and Recreational Values

A large number of individuals and several local organizations have filed with the Commission objections to the construction of the proposed project. In most instances, the objections have been based upon the assumption that its construction and operation would inevitably impair the scenic beauty of the area. Some of such objectors have assumed, too, that the existence of the project reservoir, because of the use of Hudson River water, would result in pollution of ground waters in the area. Others are persuaded that the project would seriously impair the use of the area for camping, hiking and other such recreational activities.

More specifically, Philipstown and, in general, the objectors residing on the east side of the river, direct their attack on any of Applicant's overhead transmission lines which might traverse that area. Philipstown, of course, participated in the hearing and presented evidence in opposition to the construction of any such transmission lines through that town. This subject will be discussed separately and in greater detail under the discussion of the impact of the project in the transmission line area.

Scenic Hudson, its brief asserts, is concerned with the preservation of the area on or adjacent to the Hudson River, which, the intervenor asserts, is the heartland of the Hudson Highlands. In Scenic Hudson's opinion, "the proposed Cornwall pumped-storage project, consisting of a tremendous power plant gouged into the north side of Storm King Mountain, large transmission lines on the east bank of the Hudson River and a large storage reservoir in the Highlands would * * * do irrevocable damage to an area of great scenic, historical and recreational value."

In view of this "irrevocable damage," Scenic Hudson contends that the peaking power requirements of Con Edison must and can be met in other ways. The "other ways" suggested by Scenic Hudson have already been considered and found incapable of providing the benefits which could be derived from the proposed Cornwall pumped-storage power plant.

Here it should be said that in order to achieve a clearer and more accurate picture of the natural and other conditions which exist there, the Presiding Examiner visited, on June 25, 1964, West Point, the reservoir site, the plant site, Stony Point and Nelsonville, and thereafter followed as closely as possible the route of the transmission line proposed by Con Edison from Nelsonville to the environs of Peekskill. The evidence in this proceeding respecting the impact on the beauty and recreational value is being evaluated against that background of personal knowledge.

To the extent that it has not been defiled by human hands, the area along the west bank of the Hudson River from Bear Mountain to Cornwall, including West Point and its environs, is indeed magnificent, as all who participated in the proceeding would readily agree. The eastern shore of the river between the

Newburgh Bridge and Cold Springs was also an area of unusual natural beauty. That the Hudson Highlands is also an area of considerable historical significance is not denied by anyone either. Scenic Hudson contends, however, that "one factor cannot be singled out and others ignored, such as considering the effect of the project on scenic resources and the ignoring of its impact upon the area's historical values." The import of this language in the context of this proceeding is not entirely clear, but one thing is quite certain. There are no buildings, monuments, restorations, sites or other such things of historical significance in or adjacent to the areas which would be occupied by either the reservoir or the power plant, and thus those features of the project could not directly impinge upon the historical values of the project area.

Before giving consideration to the evidence and arguments presented by Scenic Hudson, the contention of Con Edison, concurred in fully by the Village of Cornwall and at least partially by the Staff of the Commission, that the construction at Cornwall would enhance rather than detract from the recreational and scenic values of the Hudson Valley should be appraised. This contention rests upon evidence as to the present condition of the river front on the west side of the stream in the neighborhood of Cornwall and on the east side in the neighborhood of Stony Point.

Evidence was offered by the Village of Cornwall and by Con Edison with respect to the state and the condition of the waterfront upstream, that is, to the west and north, of the site of the proposed power plant. The evidence shows that north of the project site along the river there is located a large building that had been partly reduced by fire and which is presently used as a woodwork and lumber storage shop. There are also located in this area several old buildings used for chemical manufacturing. Near the project power plant site is the Cornwall Yacht Club which is employing as a breakwater a large abandoned sunken barge located at a point near the shore line. Further on up the river, there is, in order, a burned out coal dock and pier, formerly owned by New York, Ontario and Western Railroad Company, a village dump and there are marshlands south of the dump. A witness for Con Edison submitted for the record a series of photographs which show quite graphically the deplorable condition of the waterfront in the Village of Cornwall.[8]

This evidence is convincing that the river front on the west side of the Hudson and immediately north and west of Storm King Mountain is not now in its natural condition, and the structures which are presently to be seen there do not contribute to, but greatly detract from, the appearance of the waterfront in this area.

Although the cluster of old buildings described above would not be affected by the proposed power plant construction, the shorefront beyond them for a distance of almost a mile would be used by Con Edison for the deposit of spoil excavated from the power tunnel. The area would be graded, covered with topsoil and replanted. The Company proposes to then transfer this strip of river front to the Village of Cornwall for a public park. This would constitute a substantial improvement along the village waterfront and such a park would be of great recreational benefit to the residents of the village.

On the east side of the river, the waterfront in the neighborhood of Little Stony Point has also suffered serious defacement. A railroad line and a public highway traverse the water's edge, and two pole lines carrying large numbers of communication wires lie alongside the tracks. Five or six hundred acres with a frontage of about ¾ of a mile abutting the railroad and highway are owned by the New York Trap Rock Company. On that property, terraced up the face of Bull Hill, there is a series of unsightly buildings which were used in connection with the quarrying operations. Structures which contain facilities to convey the quarried stone extend over the railroad to other buildings on the waterfront. Quarrying has opened up, and there remain exposed to view, vast expanses of the rocky hillside, but the operations of the plant have been suspended and the structures are presently unoccupied and unused. The remains of an abandoned wharf and pier evidence earlier industrial activity, and the waterfront is literally strewn with debris. This stretch of shorefront is within the Town of Philipstown.

---

[8] About half way between Cornwall and Newburgh, there are, along the river's edge, a number of large petroleum tanks that are far from attractive, and from that point upstream and beyond Newburgh, the waterfront is almost continuously commercial and industrial revealing nothing in the way of natural beauty.

Con Edison's chairman testified that despite the present deplorable condition of the waterfront at Little Stony Point, basically the area is outstandingly scenic and for this reason the Applicant yielded to the pleas from various sources that it place its transmission lines underground along this stretch of the river. The decision was partially influenced by Con Edison's hope that the Philipstown authorities might take steps to remove the unsightly structures and clean up the waterfront. In addition, Con Edison's chairman indicated that the Applicant might be able to contribute to an effort by the town, if one were made, to create, by the use of spoil from the construction on the west side of the river, a fine waterfront along this part of the shore.

It is clear from the foregoing that the appearance of the Cornwall waterfront adjacent to the area the power plant would occupy and the stretch of the river in the neighborhood of Little Stony Point on the east side thereof, would be substantially improved if Con Edison's proposals were accepted. It is not enough, however, to find that presently these areas are less attractive than they were in their natural condition and should be improved upon in order to justify, in the public interest, other damage to the natural beauty of the area if that might result from the construction and operation of the Cornwall project. It becomes necessary then to consider the evidence in the record relating to this issue.

Two of Scenic Hudson's witnesses addressed themselves to the subject of the scenic and historical values of the Hudson Highlands. One of them was the well-known author, soldier, teacher, editor and writer of many and varied articles and narrations, Carl Carmer. Mr. Carmer, who resides at Irvington-on-Hudson, is the author of some 30 books, among them, *The Hudson*, *The Susquehanna*, *Listen for a Lonesome Drum*, *Dark Trees to the Wind*, *Genesee Fever*, and, perhaps the most widely known, *Stars Fell on Alabama*. Mr. Carmer is first vice president of the Hudson River Conservation Society and president of Boscobel Restoration, Inc. With eloquence, he stated for the record his opinion as to the significance of the Hudson River as a national heritage. After reviewing briefly some of the incidents which occurred in the revolutionary period and commenting upon the architectural and artistic attractions of the Highlands, he presented a telling argument in support of conservation as a national policy, with specific application to the Hudson Valley. He expressed the belief that true progress is made when the people preserve their inheritance of scenic, historic and recreational values as essential to their lives. He undertook, however, no specific evaluation of the impact of the proposed project on the natural beauty, the historic values or the recreational opportunities of the area.

The other of those two witnesses was Benjamin West Frazier, resident of the hamlet of Garrison, a scholar, a member and erstwhile president of the Putnam County Historical Society, a combat correspondent for *Yank* Magazine and a frequent lecturer to groups and historical societies on the history of the Hudson

Highlands. Mr. Frazier has been a member of the Hudson River Conservation Society since its organization and is presently a vice president of that organization, a member of the Constitution Island Association since childhood and chairman since 1948. In 1955, he organized Boscobel Restoration, Inc., and has served as its president and vice president. Mr. Frazier testified that he had restored ten historic houses in the Highlands and has served as advisor in numerous other restorations in the area.

This witness presented a map showing the Highlands of the Hudson from Bear Mountain Bridge north to the City of Newburgh, on which he had located a large number of historic spots including West Point and in connection therewith presented a brief description of the historic significance of the points indicated. He emphasized the importance of West Point as a tourist center and disagreed with the testimony of a Con Edison witness to the effect that the proposed switching station at Nelsonville could not be seen from the parade grounds at the Academy.

Both Mr. Carmer and Mr. Frazier are conservationists and protectionists dedicated to the preservation of natural beauty and historical building sites and areas and they have devoted and continue to devote without expectation of compensation to these highly commendable activities. One need only travel by car from the George Washington Bridge to Bear Mountain Bridge over the Palisades Parkway noting the deplorable condition of the approach to the former to appreciate the tremendous contribution the men and women who are devoted to protection and conservation have made to the present and future of America. There is due them a great deal of gratitude and respect.

As has been said, that the Hudson Highlands and the Hudson River Valley from Cornwall-on-Hudson south to Bear Mountain and below are areas of unusual natural beauty and rather exceptional historic significance has not been controverted by anyone. With what seemed to be a spirit of local pride, Con Edison said in its brief:

> Con Edison is happy to concede that the Hudson River Valley is one of the most beautiful scenic areas in the United States. It has long been a mecca for artists and writers, who have perpetuated its natural loveliness in paint and prose. By the same token, Con Edison is equally willing to concede that historically the area around the Hudson River Valley, particularly near the Hudson Highlands and including, of course, West Point itself, is fraught with interest and steeped in national tradition.

But Con Edison insists that its planning from the beginning has been consistent with the preservation of the scenic and historical values of the Hudson River Valley. The evidence bears out Con Edison's assertion that in this process it has consulted with officials of the Palisades Interstate Park Commission, the Hudson River Conservation Society and with other individuals and groups in the area who have been willing to offer constructive suggestions. Applicant insists that it has always cooperated and will continue to cooperate with the Palisades Park Commission and local agencies to insure the preservation and protection of scenic values in the valley.

In this connection, it should be said that while the Palisades Park Commission favors natural beauty and the maintenance in their natural state of park and recreational areas, that Commission has interposed no objections to the Applicant's proposal. It should also be noted, as clearly appears from Mr. Frazier's testimony, that there is a rather definite disagreement between the members of the Hudson River Conservation Society as to the extent to which that organization should object to the project proposed herein by Con Edison. It seems clear that whether all conservationists and protectionists favor the maintenance intact of natural beauty, some are prepared to make pragmatic adjustments arising from off-setting public interests.

In any event, however, the problem cannot be solved in such general terms, nor by appraising the proposal as a unit. Actually, because of the nature of the project, its impact upon scenic and recreational values can only be assessed by considering the evidence in three separate areas, (1) the reservoir area, (2) the power plant area and (3) the transmission line area.

In the Reservoir Area—As has been said, the reservoir would be created by the construction of five dikes between the ridges surrounding Cornwall's present upper reservoir and the consequent increase in elevation of the water to 1160 feet. The dikes, other than Dike No. 3, would be quite remote from any open or paved roads and would, therefore, be relatively inaccessible to persons other than those on foot. Although Dike No. 3 would not be a great distance from Highway 9W, it would be substantially above it in elevation. Because of the difference in grade when the adjacent trees and shrubbery are in foliage (which would be the condition during most of the tourist season), none of the dikes could be seen from any vantage point except alongside them and at the same level.

The dikes would be constructed in a curvilinear design so that from the air the reservoirs would have a more presentable and natural scenic appearance. The testimony is that the dikes would be so arranged that from that vantage point, the reservoir's surface would be pleasing in shape and appear as a naturalistic lake. The evidence is persuasive that the reservoir would not be visible from any public highway and would be screened by woods from any local trails.

The area immediately adjacent to the present reservoir for from 25 to 50 feet is closed to the public and no hunting, fishing, or other trespassing is permitted in that area. The remainder of the village property is, however, open to the public and some hikers tramp around the perimeter of the pond. That the present reservoir area is to a limited extent, at any rate, used for recreational purposes is evident from the discarded beer cans which can be seen there.

The mountain area adjacent to the village reservoir is owned by several large land holders, the largest being Harvard University which is the owner of the tract know as the Black Rock Forest. This forest, consisting of roughly four thousand acres, lies to the west and southwest of, and quite near, the present reservoir. It consists of a number of peaks and includes also several ponds. About 70 acres of forest property would also be inundated by the proposed project reservoir. Otherwise, the Black Rock Forest would be unaffected. The testimony relating to the extent to which the Harvard Black Rock Forest is open to the public is conflicting. The mayor of the Village of Cornwall testified that the entire acreage is closed to the public, and except by special permit, the use of the area is forbidden. The son of the donor of the property to Harvard University[4] testified that to his knowledge hiking had never been prohibited in the area which would be flooded by Applicant's proposed reservoir, but its use by hikers is very sparse. This witness testified that in the area to be occupied by the larger reservoir there are not any hiking trails. However, a witness for Scenic Hudson testified that one or two trails pass very close to the upper reservoir. Hunting and fishing in the forest are prohibited except to members of the Black Rock Club. There is a public road which enters Black

---

[4] This witness, deputy to the Secretary of Commerce of the United States and in that capacity a participant in the Recreation Advisory Council in the Department of the Interior, testified in support of the Cornwall project expressing the opinion that with respect to the reservoir area it would increase the recreational potential thereof.

Rock Forest at a point quite close to the village's upper reservoir and runs from there back into the forest. But that road is and has been gated and the gate has been locked for a number of years. Only those having keys can enter upon this road.

Since the level of Con Edison's upper reservoir would fluctuate widely on an almost daily basis as water is pumped into the reservoir for storage purposes and withdrawn for generating purposes, the reservoir would not support public recreational activities such as boating and swimming. The reservoir area at present and, as it would be if the reservoir were enlarged, is hilly and rocky and not suitable for general recreational purposes. The Applicant, therefore, proposes that public access to the reservoir be prohibited and the reservoir itself enclosed by fencing.

Scenic Hudson also called as a witness Leopold O. Rothschild, a member of The Landmarks Preservation Commission of the City of New York, a member of and active in The Citizens' Union, a director and member of the Legislative Committee of The Citizens' Housing and Planning Council, a director and conservation chairman of the New York-New Jersey Trail Conference and a member of The Nature Conservancy.[5] For more than 55 years, this witness, who resides in a 13-story apartment house on West End Avenue in New York City, has hiked the dirt roads, the trails and the forests in the neighborhood of New York City. Mr. Rothschild has, during all this time, been deeply interested in the natural beauty of the area and has labored long and arduously, entirely without compensation, for the preservation and conservation of that natural beauty. His activity resulted in the acquisition by the Palisades Park Commission of the land between Highway 9W and the cliffs which extend between the George Washington Bridge and the New York-New Jersey State Line.

The Highlands are largely publicly owned on the west side of the river. On the eastern shore, however, the property is almost all privately owned. Mr. Rothschild expressed the opinion that "the proposed Con Edison pumped-storage plant would be a major defacement of the north gate of the Highlands." This witness adopted, as reflecting his views, the language appearing in a newspaper editorial which expressed the view that "to plunk down a couple of power installations in this area would be almost as bad as constructing a utility plant in the middle of Central Park." Mr. Rothschild felt that "from a recreational point of view, the plant is deplorable."

Mr. Rothschild testified that the New York-New Jersey Trail Conference maintains about 17 miles of trails through the Black Rock Forest and that those trails were extensively used. Although as has been noted there is evidence that the reservoir area is frequented to some extent by persons bent on recreation, a visit to that area is persuasive that aside from access to the adjoining rifle range, the area adjacent to the present reservoir is not used extensively for hiking or camping purposes.

A personal inspection failed also to disclose evidence that the use of the 70 acres of Black Rock Forest, which the Applicant proposes to acquire in connection with the larger reservoir, impairs in any way the use of the forest for recreational purposes.

In response to this Commission's invitation, the Secretary of Interior has submitted comments on the Cornwall project. He found that there are no fishing considerations in connection with the proposed upper reservoir, but he suggested that the Applicant consult with the New York State Conservation Department to determine wildlife potentials and possible management measures. The Secretary felt that screens or other devices should be installed to prevent fish in the river from being drawn into the pumps and suggested that the Applicant, the United States Fish and Wildlife Service and the Division of Fish and Game of the New York State Conservation Department should cooperate in the design of the required fish screen or other exclusion devices.

---

[5] An agency interested in the acquisition of particularly interesting spots of land throughout the country, the nature of which is threatened. For example, it purchased some 6,000 acres in California in order to preserve a particularly magnificent stand of Redwood or Douglas Fir and the Sunken Forest.

Representatives of Con Edison have met with representatives of the New York State Conservation Department and have completed and submitted to that department and to the United States Department of the Interior plans for fish screening devices which Con Edison believes will be adequate to protect the Hudson River fish life from being drawn into the tunnel.

The Applicant employed to advise as to any effects the Company's proposed project might have upon the fish life of the area an associate professor of biology with New York University who appeared as a witness in this proceeding. This witness has an extensive background of study and experience over a period of 30 years in the field of ichthyology and acquatic biology including long familiarity with the fish life found in the estuarian section of the Hudson River where the project would be located. He examined the fish screening devices the Applicant proposes to install, considered the Company data with respect to the use of the project for pumping the water from the river to the upper reservoir and the flow of the water in its return to the river, the approximate rates of discharge during the two operations, the velocity of the water and the tailrace which would serve the point of both intake and discharge, and he made some computations of the anticipated temperature variations between the water discharged and the water in the river.

He concluded that there would not be a variation in temperature of such magnitude as to constitute an attraction to the fish, that the velocity of the water into the intake would not endanger the fish, and that the screening devices Applicant proposes to install would protect the fish from being drawn into the intakes. He expressed the opinion that there would be no appreciable effect of the proposed project on the fish life of the area in light of the over-all mortality rate of larva and the small fish.

The secretary of the New York State Water Resources Commission made a statement for the record on behalf of that Commission. That agency requests that the Applicant be required to provide assurances that adequate barrier facilities would be installed and maintained in the intake works to prevent the loss of fish. The technical staff members of the Conservation Department's Division of Fish and Game have reviewed Applicant's plans for a fish barrier screen and have found them adequate to prevent loss of adult fish of the species which might be affected. The possibility still exists, however, that extensive losses of eggs and/or young of valuable species might occur after installation of the proposed screening devices. The Water Resources Commission, therefore, requests that the Applicant take full responsibility for making needed practicable additions, improvements, or alterations if investigations disclose inadequacies of devices installed for fish screening purposes.

The Applicant has signified a willingness to accept a license containing a condition that the final design and construction details of the project plant be approved by this Commission. More specifically, the Applicant has consented to a condition as follows:

> The licensee shall construct, maintain and operate, such protective devices and shall comply with such reasonable modifications of the project structures and operation in the interest of fish and wildlife resources, *provided* that

> such modifications shall be consistent with the primary purpose of the project, as may be prescribed hereafter by the Commission upon its own motion after notice and opportunity for hearing and upon a finding that such modifications are necessary and desirable and consistent with the provisions of the Act, and, *provided further* that, subsequent to the approval of the final design drawings prior to commencement of construction no modifications, of project structures in the interest of fish and wildlife resources which involve a change in the location, height, or main structure of a dike, or a major change in generating units, or a rearrangement or relocation of a powerhouse, or major changes in the tailrace structure shall be required.

The Secretary of the Interior also recommended cooperation between the Applicant, the Palisades Interstate Park Commission and interested state and local agencies and organizations to insure the preservation and protection of scenic values of the Hudson River Valley.

The Palisades Interstate Park Commission is a creature of Congress. It has jurisdiction over a park area lying on the west side of the Hudson River and extending from a line south of the George Washington Bridge to the south boundary of the City of Newburgh and into mountain land to the west thereof. The Storm King section of the Palisades Interstate Park which contains about 3,000 acres was established in 1922 when Dr. Ernest G. Stillman gave 800 acres to the park system. The total acreage of this section of the park system has been expanded by gift and purchase to 1,142 acres. This park area is used primarily for hiking purposes, but both the old and the new Storm King Highways pass through or near this section of the parkway. The Appalachian Trail, however, crosses the Bear Mountain Bridge from west to east and, therefore, does not go through the Storm King section of the park.

The general manager and chief engineer of the Palisades Interstate Park Commission appeared at the hearing to state the position of that Commission with respect to Con Edison's proposed project. The parkway will not oppose the project, he said, "provided that all reasonable steps are taken to preserve the scenery, and to make the powerlines on the east side of the river as inconspicuous as possible."

In a letter dated April 13, 1964, to a member of the Philipstown Citizens Association, the vice president of the Palisades Interstate Park Commission and the chairman of the State Council of Parks said of this project that:

> This is a problem in resource allocation among conflicting uses. The Palisades Interstate Park Commission approaches this matter with the attitude of arriving in the maximum project benefit from one use while limiting the damage to the other use to a minimum by working with the company.

In certain instances, the Park Commission grants easements for power and utility lines above ground and for water, sewer and gas lines below ground. The power tunnel which would extend from the upper reservoir to the power plant and river would be located in part beneath the lands of the Palisades Interstate Park Commission. Con Edison has offered to buy 150 acres of property adjacent to the reservoir area and transfer this tract to the Palisades Interstate Park Commission in exchange for the granting by that body to the Applicant of an easement for construction of the tunnel underneath the parklands. Con Edison further proposes that if it has to acquire any excess lands in this area for construction purposes, it will donate them upon the completion of the project, to the extent they are not necessary to its operation and maintenance, to the Palisades Interstate Park Commission. In this way, the area of lands available for parks, recreation and the other purposes of the Interstate Park Commission, will be increased.

In addition, Con Edison has verbal commitments to acquire property to the north of the power plant extending about 4,000 feet along the westerly river front. Under the supervision of the Corps of Engineers of the United States Army, pursuant to the usual provisions which will be contained in the license, Con Edison would use this property during the construction period for the deposit of soil excavated from the tunnel. Upon completion of the tunnel and the project, this property would be graded, adequately covered with topsoil and replanted. Con Edison proposes to then transfer this strip of river shore to the village of Cornwall for a public park.

A question has been injected into the proceeding by persons who did not appear or offer evidence, and by Scenic Hudson, as to the effect, if any, on ground water in the area of possible seepage from the project upper reservoir of water which had been pumped into it from the Hudson River.

At times, the Hudson River flowing past Cornwall is predominately fresh, while at other times it is somewhat saline as ocean water moves upstream from the sea. Raw sewage is dumped into the Hudson from a number of upstream communities, while others discharge wastes that have received the primary sewage treatment. The river also receives industrial wastes and sanitary sewage from a number of upstream industrial plants. Surveys of the river show the presence of oil slicks and debris, and it is not disputed that the stream should be considered polluted in the neighborhood of the Village of Cornwall. Statistics compiled by the U.S. Public Health Service for the period October 1, 1961 to September 30, 1962, showed the presence of coliform bacteria from sanitary sewage from several thousand to as much as 11 and 12,000 coliforms. The chloride content of the water has gotten above 1,000 parts per million at Breakneck Point opposite Cornwall. By comparison, the chloride content of ocean water is about 18,000 parts per million and the U.S. Public Health Service recommends that chloride drinking water should not exceed 250 parts per million.

A witness for Scenic Hudson testified that rocks of the type discovered in the reservoir are normally crisscrossed by a variety of openings and fractures some of which may be open enough to yield fairly large quantities of water. The ground water in the rock fractures is constantly in motion in a downhill direction, this witness said, and eventually finds its way into the brooks and streams that drain the hillsides. He testified that since the new reservoir would cover about 10 times as much land as the present one and the height of the water level would be increased approximately 200 feet there would be applied roughly a 10-fold increase in the head of the water and as a very rough estimate, then, 100 times as much water would seep downward from the proposed reservoir as now seeps downward from the smaller existing pond. The witness testified that he had no idea how much water would escape from the reservoir in this fashion except that it would be many times more than the amount now moving in the ground in the vicinity of the reservoir. There is a possibility, he said, that water from the Con Edison reservoir could seep underground into Black Rock Hollow and also into the tributary that drains Alec Meadow Reservoir above the existing filtration plant.

A witness for Con Edison testified, however, that disease producing organisms have limited lives, no longer than a week; that the time of travel from the upper reservoir any distance would be many days, months or years; that where the soil is not disturbed, it will act as a filter; and, in general, the rock throughout the area is not very permeable and the soil cover where present would offer an impedance to seepage. This witness also said that the existence of numerous lakes in the area indicates that the faulted zones are relatively impermeable and do not permit the water of the lakes to seep downward through the rocks at an appreciable rate. Another Con Edison witness said that he would consider it absolutely unnecessary to even think of lining the floor of the reservoir.

A witness for Con Edison testified, too, that the maintenance of a dozen lakes with water levels at high elevations above the Hudson River in the neighborhood of Cornwall demonstrates that in spite of the complex fracturing, faulting, weathering, and so forth, the underlying granitic rock is so impermeable that these bodies of water are maintained as retention reservoirs, perched high above the Hudson River. A study of the test borings, this witness continued, indicates that even without the impermeable dikes that are proposed, a water table along the topographic divide stands at a higher elevation than the proposed impoundment level of 1160 feet. It is obvious that even with the reservoir at an elevation of 1160 feet there can be no natural seepage of water because such seepage would be prevented by the downward water table in the areas above elevation 1160. It follows, therefore, he said, that if any seepage were to take place from a reservoir with elevation 1160 it would have to be vertically downward. If any seepage did occur, it would have to be small because of the impervious character of the granite bedrock at moderate to great depths.

While this witness agreed with Scenic Hudson's witness that any increase in head would increase the rate of seepage, he disagreed violently with that witness' statement that the increase would be in the ratio of 200 to 20. The proper ratio, he testified, was 977, the elevation of the current upper reservoir, to 1160, the elevation of the proposed upper reservoir, or an increase in head of 183 feet, or less than 20%, rather than the 100% that Scenic Hudson's witness had assumed using 200 feet and 20 feet, respectively.

This witness testified that in his opinion the present seepage out of the existing reservoir is entirely insignificant and a percentage increase would result only in a larger but still an insignificant volume. On cross-examination by Staff Counsel with respect to the effect of seepage from the proposed reservoir on wells outside the water shed area, the witness said:

> The seepage from the reservoir I would say would be negligible as compared with the seepage that would come from surface precipitation outside the reservoir area.

The preponderance of the evidence clearly supports the conclusion that there is no danger of seepage of any significant quantities of Hudson River water out of the proposed upper reservoir.

The evidence shows that safeguarding the quality of the Cornwall and Highland Falls municipal water supplies and the few domestic wells in the neighborhood was stressed during the initial investigations of the project site. Con Edison then directed the engineers in charge to set up and operate a sampling program at an early date and maintain it for several years after the completion of the project and the filling of the reservoir. Until such time as the reservoir is first flooded sampling and analysis will occur on a quarterly basis. After the reservoir is completed, the sampling will be on a much more frequent basis for about two years and it will then revert to a quarterly basis. Frequent tests will be made to determine whether the reservoir water is migrating outward and downward from the reservoir.

Con Edison's vice president testified that if the Commission has any doubt concerning the freedom from seepage of the project dikes it might insert in the license a condition providing that if, in the future, the reservoir is in operation, any seepage occurs causing appreciable damage to any stream, or public or private water supply, the Company will be obligated to take appropriate steps to remedy the situation or to compensate all persons injured thereby. Such a condition will be inserted in the license which will be issued herein.

In the Power Plant Area—Some three miles below Newburgh, the west bank of the Hudson River bends rather sharply to the southeast thus narrowing the stream and enabling it to pass between Storm King Mountain on the western and Breakneck Ridge on the eastern shores, respectively. The generating plant of the project proposed herein would be constructed on the west bank of the stream a very short distance to the northwest of the narrows and at a spot where the shoreline runs approximately east and west. The plant would face almost due north and substantially up the middle of the wider portion of the stream. The building housing the generating units would be placed directly inshore from the river with only the right-of-way of the New York Central Railroad between the stream and the plant. Behind the plant, Storm King Mountain would rise to an elevation of over 1300 feet above the river, which, at this point, is considered as zero feet above sea level.

The plant site throughout most of its width was, apparently around the turn of the century, terraced to permit the construction on the several levels of riverside summer homes. The project plant, similarly, would be terraced into and upon the northern flank of the mountain. Only the gantry crane and certain of the upper switchyard equipment, described below, would rise above the preconstruction grade of the plant site. The center line of the turbines would be 50 feet below the water line and the substructure would extend 80 feet below the river surface. The power station structure would be constructed of inconspicuous neutral colored concrete and would rise about 30 feet above the river level. The plant would thus appear to one upon the river in midstream as a building 30 feet in height and about 800 feet in width. At the plant roof level and extending back about 900 feet, largely into the excavated mountainside, would be the operating deck. Upon this deck would rest the gantry crane referred to above, a wheeled frame-like structure 90 feet in height resting upon tracks so that it could be moved across the structure above the operating units as the need for its services might arise. Most of the time the gantry crane would be parked at one end of the structure.

The only other equipment on this operating deck would be a transformer with its accessory lightning arrester. The testimony is that the transformer is an inconspicuous tank-line structure which would not protrude very much above the deck level. Behind this operating deck a rock wall would rise up from elevation 30 to 100. At the top of this wall would be the "second switchyard" which would extend back from the face of the rock wall about 122 feet. At the rear of this level also there would be exposed the stone of the mountain. The equipment which would be located on this "switchyard" is known technically as "the rigid bus type of structure," the explanation of which was that there are no high unsightly towers and no suspension of loose wires that blow in the wind. These structures, the testimony shows, are relatively low and slender, and the conductors are rigid tubing which tends to take on the patina of old age. This level would blend into the final grading of the project so it would be relatively inconspicuous.

Some 500 feet above the upper switchyard level the Storm King Highway cuts across the mountainside. The area between the upper switchyard and the highway is rather heavily wooded and when the trees are in leaf the plant could not be seen by those passing along the highway above. To the east of the plant there is also a rather heavily wooded area. On the west forestation is somewhat less but the evidence is that around the plant where and when it might prove helpful the area would be landscaped.

Only from the riverside and from positions relatively close to it could the plant be clearly seen. Con Edison has retained one of the country's leading firms of landscape architects to direct the landscape development surrounding the plant, the dike areas and all other areas denuded by construction work. A partner of that firm testified in some detail the plans for this work. He testified that even in those areas which could not be shielded from view the natural rock exposed would be attractive to the eye. All in all, this witness concluded, the river front section where the power structure would be exposed to view would be pleasing and infinitely better than the conditions that now pertain.

There is no evidence, and in fact no contention, that the construction of the power plant in and of itself would affect adversely the historic or recreational values in the area. It would, of course, result in a tremendous benefit to the waterfront and consequent recreational benefits to the Village of Cornwall.

In the Transmission Line Area.—Although conceding that the transmission line which would connect the Cornwall East Power House with its distribution center at Sprain Brook is a necessary part of the Cornwall project, Con Edison contends that the Commission has no statutory authority to dictate the routing of the line or the method of installation, that is, whether it would be overhead or underground. Con Edison asserts that the reports, orders and opinions of the Commission disclose no instance[8] in which it has prescribed in the order issuing a license the route or characteristics of the transmission line essential to the project contrary to the desires of the Applicant. But this would establish no more than that the question had not heretofore been raised.

Generally, in the past, hydroelectric projects have been located in relatively remote areas and the transmission lines have traversed regions sparsely settled and indifferent to such things. But, one would hardly contend that the conditions and practices of the past should be controlling today or tomorrow nor can there be agreement with Con Edison's contention that the Commission's statutory authority with respect to transmission lines extends only to engineering aspects including safety, stability and efficiency. We have already concluded that consideration of the application for a license for a hydroelectric project necessitates the appraisal of all factors having an impact upon the public interest, and such appraisal should hardly be confined to one of the principal project works to the exclusion of the others.

It is, therefore, concluded that it is the responsibility of the Commission in instances in which the issue is raised to determine in the public interest the route and nature, that is overhead or underground, of the primary transmission lines.

Initially, Con Edison had proposed that the major switching station be erected at the plant site and that the power be transmitted across the river by means of overhead lines. By February 25, 1964, because of strenuous objections thereto, this plan had been altered. Then Con Edison proposed that Cornwall power be transmitted through two 345 kilovolt submarine circuits crossing under the river, and that the switching station be erected on the east side of the river adjacent to the tracks of the New York Central Railroad in the Town of Philipstown. The change from overhead to submarine transmission for the river crossing increased Applicant's transmission line cost approximately $6.5 million.

---

[8] Staff Counsel, however, cites an article inserted in the license issued in *Portland General Electric Company*, Project No. 2030, 24 FPC 408, 417.

Then it was proposed that from the switching station, the line would run overhead in a southerly direction for some distance parallel to the railroad tracks, and then turn in a southeasterly direction to extend to and connect with Con Edison's transmission system at its Millwood Station. From the Millwood Station to Sprain Brook the line was to be on an existing right-of-way but would be reconstructed for the higher voltage. However, at the first session of the hearing, the exact route of the transmission line had not been determined upon. It was then said that Con Edison was looking for constructive ideas and would be willing to do everything economically reasonable to minimize damage of any kind.

Upon the resumption of hearing on May 4, 1964, the Company proposed that from the eastern terminus of the submarine cables the transmission lines extend, still underground, in a southerly direction parallel to the New York Central tracks for a distance of about one mile to Little Stony Point then turning to the northeast and continuing inland about three-fourths of a mile to Nelsonville at which point the Cornwall East Switching Station would be located. This change was prompted by the desire to preserve the scenic values of the eastern shore of the river and to some extent by the hope that Philipstown might cooperate in the improvement of the appearance of its water front in this area. At the switching station, the Applicant would go to overhead transmission lines which would follow contour lines in such a way that the transmission poles would be as inconspicuous as possible. The route then proposed, however, was to be subject to some variation when line surveys were made in order to accommodate local community and individual interests to the extent possible while giving consideration to operating and economic factors.

The substation facilities were to be reduced in height, and there is testimony to the effect that the switching station which the Applicant proposed to construct at Nelsonville would not be visible from the river, but screened by natural woodland.[7] Forest growths outside the switching station site which might be destroyed during construction would be replaced.

From the switching station in Nelsonville, the line would extend in a generally easterly direction crossing New York State Highway No. 301 and U.S. Highway No. 9 approximately one-fourth mile south of McKeel Corners, a distance of about 3½ miles to the Philipstown–Putnam Valley town boundary. Continuing in an easterly direction to a point near Duck Pond, the line would then turn almost due south substantially paralleling, and at a distance of about one-fourth mile to the east thereof, such town boundary.

Although the nature and the route of the transmission lines had not been made known, except in vague and general terms, Philipstown filed on February 24, 1964, a petition to intervene in the proceeding and permission to participate was granted by the Commission. The petition to intervene disclosed the opposition of Philipstown Citizens Association to the erection of overhead power transmission lines through the Town of Philipstown. Despite the change in Con Edison's plans by which the transmission lines would be underground from the terminus of the submarine cable for a distance of 1.6 miles and the switchyard would be constructed some distance from the river, Philipstown persists in its objection to overhead lines from Nelsonville to the Philipstown boundary. In this objection, Scenic Hudson joins Philipstown.

---

[7] As has been mentioned (*supra*, 481), this testimony was disputed by Scenic Hudson's witness Frazier. The personal experience of the writer leads him to the conclusion that when the leaves are on the trees the switching station at Nelsonville could not be seen from the parade grounds at West Point and that during the winter months when the trees are bare the superstructure and wires which might possibly be seen could not be distinguished from the leafless branches of trees.

The Town of Philipstown lies on the east side of the Hudson River and extends from a point opposite Storm King Mountain to a point opposite West Point, thus encompassing the area from the Duchess County line on the north to the Westchester County line on the south, a distance of some 8 miles. From west to east, from the intersection of Route 301 with the eastern boundary of Nelsonville directly to the easterly boundary of the Town of Philipstown is about 2½ miles. Philipstown constitutes a scenic area within which are more than a dozen "substantial mountains" and the terrain is, therefore, rugged and mountainous, with, outside the villages and hamlets, a rural scattering of homes. Except for the main arteries of travel (Route U.S. 9 and State Route 301), most of the roads, including the "Old Albany Post Road," are dirt.

The area of the town is about 44 square miles and within it are the Communities of Nelsonville, Cold Springs, Garrison and Continental Village. The assessed value on the town tax rolls is approximately $6 million. The construction of the transmission lines across Philipstown would produce annually tax revenues of about $250,000, but the town expects to collect a similar amount if the lines are put underground.

Over 90% of the land in the town is zoned residential. Cold Springs, Garrison, Graymoor Village, Lake Vallhalla and part of Continental Village are zoned residential with lots of a minimum area of 9,000 square feet. The remainder of Continental Village is zoned for ½ acre lots and the balance of the residential area of the town is zoned for one acre or more. Much of the land is held by estates, but about 25% is held by religious and other tax-free institutions. The testimony is that large areas are also used for recreational purposes and that the river front (south of Cold Springs) is extensively used for boating. A golf course has recently been constructed directly across the river from West Point.

The river front to a depth of 300 feet beginning at the western town boundary and extending to a point about halfway to Nelsonville is zoned for business and light industry. The remaining distance to Nelsonville, as well as a large area north thereof, the property owned by the New York Trap Rock Corporation, is zoned "industrial." The switching station and the overhead transmission lines to the point where they would cross Highway 301 would lie within the limits of the unincorporated Village of Nelsonville, which may or may not have zoning regulations. It should be noted, however, that Nelsonville has recorded no objection to the construction proposed within the village boundary. A strip of about 400 feet wide on either side of U.S. Route 9 throughout the length of the Town of Philipstown is zoned "business and light industrial." On March 6, 1964, between the sessions of the hearing held herein, the Town of Philipstown enacted an amendment to its zoning ordinance adding thereto the following provision:

> Notwithstanding the provisions set forth in this Article, no public utility, *not directly servicing the Town of Philipstown*, County of Putnam, shall install any lines for the transmission of electric power through said town unless the same is underground. [Emphasis supplied.]

Central Hudson Gas and Electric Corporation serves the Town of Philipstown directly and would thus, under this provision, appear to have the right to construct through the area aboveground transmission lines. On the other hand, Con Edison, while supplying Central Hudson with substantial amounts of energy and having a verbal understanding with Central Hudson to sell the latter a proportionate share (based upon their respective system loads) of the energy generated at the Cornwall Plant, under this ordinance, would be denied the right to do so.

Philipstown, in its opposition to the installation by Con Edison of overhead transmission lines through that town, offered the testimony of two witnesses.[8] One was the chief administrative official in the town government who testified, among other things, that there are now no high tower transmission lines bringing power into or carrying it through the town; that the net result of the construction of the proposed overhead power transmission lines through the town would be to lower the assessed valuation of the property therein and create a potential area of blight.[9] The other witness, a resident for some 18 years of the Village of Garrison, testified with respect to the beauty and historical preeminence of the Town of Philipstown and the adverse effect upon the beauty and the value of the property of the construction of overhead transmission lines through the area. There was, of course, no evidence to the contrary.

In search of a solution to the problem thus presented, several modifications of Con Edison's proposal with respect to transmission facilities were considered. The efficient and economical transmission of direct current elsewhere through underground cables produced evidence to the effect that the terminals which would be necessary for the conversion of the alternating current, which would be produced at the plant, to direct current and back again to alternating current would be prohibitive in cost. The suggestion that a submarine cable be laid along the bottom of the river to a point of interconnection with Con Edison's facilities near its Indian Point nuclear generating plant resulted in evidence that such a line would be not only prohibitive in cost but would also involve technical problems of doubtful solution. Overhead construction of the transmission line along the east side of the river, on or near the right-of-way of the New York Central Railroad to the vicinity of Indian Point, was explored, but this proposal was found to present equally serious technical and other problems.

Con Edison's proposal would require the construction of 23.4 miles of overhead transmission lines extending from the Cornwall East Switching Station to Millwood. The cost of such a line was estimated at $14,600,000. In response to the requests of the Staff and of Scenic Hudson, Con Edison estimated the cost of an underground line from the submarine cable terminus to Millwood as $99,850,000, $85,250,000 more than the cost of the line as proposed by Con Edison, and the cost of an underground line from the same point to a point on the Company's existing right-of-way east of Indian Point at $85,448,000, or $68,548,000 more than the cost of Con Edison's proposed line.

No evidence was submitted by anyone to refute the Company's estimates of cost set out above.[10] Nevertheless, the Staff in its brief, undertook to question the validity of the Company's estimates. But, alternative figures nowhere appear, and there is thus no basis in the record for a finding with respect to costs other than those submitted by the Company.

The evidence shows that the route proposed by Con Edison would encounter several areas which are intensely developed and which would not only be difficult to get through but would entail a number of angles and highway crossings which would add to the cost of line construction. The Staff made a study of the area and, as a result, proposed an alternative route. This route would extend in an easterly direction from the Cornwall East Switching Station at Nelsonville, a distance of about ten miles (about 3½ miles of which would be in the Town of Philipstown and the remainder in the Town of Putnam Valley), to a point near Carmel where it would intersect a right-of-way presently owned by Con Edison and which already is occupied by two of the latter's existing transmission lines extending from Pleasant Valley to Millwood. The Staff's evidence discloses that this route, except where it would cross the Peekskill Hollow Road, would traverse a relatively underdeveloped and a very sparsely settled area and would avoid highly developed areas which Con Edison's route would encounter. The Staff's proposal, assuming the conversion of Con Edison's existing 138 kilovolts transmission line on the Pleasant Valley-Millwood right-of-way would result, the Staff calculates, in a 10% reduction in costs. However, the method of getting from Carmel to Millwood, the Staff was willing to leave with the Company.

---

[8] Statements of position in opposition to such a proposal were made by others including Congressman Barry of that district.

[9] He seemed to feel that the assessed value of an underground line would be as great as that of an overhead line.

[10] Congressman Barry, in a "statement of position," employed some figures as representing "cost" but there was no testimony supporting them.

In its initial brief, Con Edison advanced a number of cogent reasons why the conversion of the line from Carmel to Millwood from 138 kilovolts to 345 kilovolts would not be possible and rejected that feature of the alternative route. But the Company recognized the merit of the Staff's proposal. In its reply brief, Con Edison announced that if the Commission finds the alternative route recommended by the Staff acceptable it would route the transmission line from the Cornwall East Switching Station to Millwood on a single tower, double circuit, 345 kilovolts, overhead line which would be constructed on a new 250 foot right-of-way, the stretch of the line from Carmel to Millwood being adjacent to and parallel with Con Edison's existing right-of-way between the latter points. Since the Staff appeared willing to leave to the Applicant the method of getting from the intersection of the line from the west with the Pleasant Valley-Millwood right-of-way, Con Edison's otherwise acceptance of the alternative route seems to accomplish the Staff's purpose.

There is little question, Philipstown's brief concedes, that the route suggested by the Staff travels through a sparsely settled area and also has the advantage of going north and northeast of the parklands which are traversed by Con Edison's proposed route. Personal observation has revealed that, constructed in accordance with the order hereto attached, aside from the crossing of U.S. Highway No. 9, an overhead transmission line along the alternative route would not have a serious impact upon the beauty and character of the area traversed by it. Philipstown still maintains, however, that lines following that route be underground through the town in accordance with the zoning ordinance quoted above.

No basis can be seen for discrimination in this respect between the Town of Philipstown and the Town of Putnam Valley. If Con Edison were required to place the alternative line underground through the former, the requirement should apply equally to the latter. Undoubtedly, overhead transmission lines as they traverse open, treeless areas present a distasteful picture to one in whose view they come. In wooded areas where the route of such lines crosses or lies within the view of persons on roads or highways, the ugliness of the facilities is emphasized by the swath which must be cleared for the right-of-way. It is no contribution to the problem to say that highways (such as the Storm King Highway around Storm King Mountain above the proposed plant) also cut ugly scars across the landscape.

Although attributing the necessity therefor to limited street space rather than aesthetic objectives, Con Edison has embarked upon a program of expansion of its underground (345 kilovolts) transmission lines. Altogether, 80 miles of such lines are planned as part of a backbone system most of which are scheduled for completion in 1965. It is believed that the time is not far distant when desirable public relations (sensitiveness to which Con Edison has commendably displayed in this proceeding) will require that transmission lines whether in narrow streets or in the wide open spaces be placed underground.

With respect to the laying of underground rather than overhead lines in this instance, Con Edison's objection is one of economics. The average cost per mile of underground line is estimated at $3,357,600, while the cost of overhead transmission lines is placed at $353,700. This is, of course, a substantial difference in cost and one which, if the 10 miles of line from Nelsonville to Carmel were placed underground, would add $30,000,000 to the cost of the project, raising a question as to its economic feasibility. In that context, there should be pointed out the statement of Con Edison's vice president to the effect that the Company would go no further with respect to increasing the underground portion of the transmission lines. In the light of the limited impact which pursuit of the alternative route would have upon the beauty and character of the area which it would traverse, it is not believed that the Applicant should be required to go further.

Economic Impact on the Village of Cornwall

As has been seen, the Village of Cornwall, an intervenor in this proceeding, contends that the licensing of the project would beneficially affect the public interest, more specifically, the economic, civic and cultural interests of the citizens of the village and the supervisor of the Town of Cornwall, the mayor of the Village of Cornwall, the trustee of that village, the chairman of the Village Water Committee, who is also a trustee of the village, testified in support of Con Edison's application. In addition, the mayor of the City of Newburgh and the representatives of six labor organizations in that city also testified in support of Con Edison's proposal.

The testimony shows that the project would have a great impact upon the economy of the Village of Cornwall and of the surrounding areas. The construction proposed would substantially increase tax revenues available to the village. In addition, it is anticipated that the construction and operation of the Cornwall project would contribute considerably to the improvement of the employment situation within the construction trades in Cornwall and the surrounding communities.

Once the project has been completed and placed in operation, Con Edison would become the largest single taxpayer within the Village of Cornwall. Based upon that municipality's present tax rate, the applicable state equalization ratios, and a rough estimate as to the cost of that portion of the project which would lie within the village boundaries, the village authorities anticipate that the annual taxes payable to the village by Con Edison would be as much as $500,000.

The mayor of the village testified that the increased taxes would permit the municipality to update and improve its municipal services such as its water and sewage services, its fire and police protection, street and sidewalk maintenance and collection, rubbish collection, recreation and other services of benefit to the community.

"We anticipate," the mayor continued, "that with these increased revenues we shall be able to construct a new village hall, library, village garage, parks, a recreational center, nature trails and municipal ski slopes." The mayor testified that without question the magnitude of the tax revenue accruing to the village from the Cornwall project should result in a reduction in the tax rate. This reduction, together with the many municipal services which would then be available, would result, the mayor thought, in the location in the area of additional industrial plants.

In addition, Con Edison will be subject to school taxes for the school district which includes both the Village and the Town of Cornwall. The construction of the pumped-storage project, the construction of the water system, the cost of which Con Edison has agreed to pay to the village, and the maintenance of the power plant will require skilled labor, a surplus of which is available. It is anticipated that the project plant would employ about 15 persons.

The supervisor of the Town of Cornwall, who is that municipality's chief executive officer, testified that the proposed project would increase the assessed value of town property two or three times the current level and that tax benefits would, consequently, accrue to the Village of Cornwall, the Town of Cornwall and the County of Orange, New York.

The mayor of the City of Newburgh testified that this city needs the proposed project "to bolster its depressed economy to provide employment to add a stimulus to * * * the rebirth. Newburgh," he said, "* * * must rebuild or die."

The representatives of the various labor organizations testified in substance that Newburgh is a chronically depressed area; that it has been 5 years since there was full employment in that city; that for the past 3 to 5 years about half of the labor membership has been unemployed; that for many years members of the represented unions, most of whom are skilled craftsmen, have been unemployed; and that the construction and operation of the proposed project would substantially improve the situation.

The evidence adduced by the Village of Cornwall was not contradicted.

ADDITIONAL FINDINGS AND CONCLUSIONS

Upon consideration of the entire record herein, the evidence adduced, and the briefs filed, it is found and concluded, in addition to the findings and conclusions heretofore set out, that:

(1) Consolidated Edison Company of New York, Inc., the Applicant in this proceeding, is a corporation organized and existing under and by virtue of the laws of the State of New York, and the Applicant has submitted satisfactory evidence of compliance with all applicable laws of that State to the extent necessary to effectuate the purposes of the application herein and of the license to be issued in this proceeding.

(2) The Applicant filed an application (and an amendment thereto) pursuant to the Federal Power Act for a license which would authorize the construction, operation and maintenance of a hydroelectric development which would be located on the Hudson River approximately 40 miles north of the City of New York, in part in the towns of Cornwall and Highlands, respectively, in Orange County, New York (known as the Cornwall site) and appurtenant project works including the necessary transmission facilities.

(3) The proposed Cornwall hydroelectric generating plant would be located in and along the Hudson River, a navigable water of the United States.

(4) There is no competing application on file with the Commission for a license for a hydroelectric development in the Cornwall reach of the Hudson River.

(5) The issuance of a license for the Cornwall project as hereafter provided will not affect a Government dam or the development of any water resources for public purposes which should be undertaken by the United States.

(6) The installed capacity of the proposed project for the purpose of computing the capacity components of the administrative annual charges, as provided in Section 10(e) of the Federal Power Act, is 2,400,000 horsepower.

(7) The present and the future electric energy requirements of the Applicant's present and potential consumers require the construction and operation of the proposed project.

(8) The project proposed and as authorized in the order issued concurrently herewith is feasible from an engineering and from an economical standpoint and the operation thereof in the manner and for the purposes proposed by the Applicant as authorized herein, are in the public interest.

(9) The project as proposed, with an initial capability of 2,000,000 kilowatts, but with provision for future expansion to at least 3,000,000 kilowatts, will be best adapted to a comprehensive plan for improving and developing the Cornwall reach of the Hudson River for all purposes.

(10) The project works as proposed and as authorized in the order hereto attached will be safe and stable.

(11) The dike facing Clove Creek should be at least 3 feet lower than all of the other four dikes.

(12) There is no danger of seepage of any significant quantities of water out of the project reservoir, but the Applicant should install observation wells in the immediate vicinity of the project reservoir dikes to measure any seepage that does occur, sample the water in wells, ponds, and streams in the area before and after construction, and take appropriate measures to correct any conditions of significant seepage and, if necessary, respond in damages to parties who may be damaged thereby.

(13) Project power would be generated at 17,000 volts and transformed to 345,000 volts for transmission at the switchyard appurtenant to the powerhouse.

(14) The power would be transmitted across the Hudson River by four submarine cables approximately 4200 feet in length.

(15) Underground cables of essentially the same design would extend on the eastern shore of the stream from the end of the submarine cables a distance of 1.6 miles to the Cornwall East Switching Station at Nelsonville.

(16) The Cornwall East Switching Station at Nelsonville would consist of station terminals, pressure control equipment, breakers and associated switches, lightning arresters, metering devices and the terminal structures for the 345 kv overhead circuits.

(17) To transmit the power which would be generated at the Cornwall project, the Applicant should construct and operate as parts of a project within the meaning of Section 3(11) of the Federal Power Act, a double circuit 345 kv transmission line on a right-of-way 250 feet in width which would extend from the Cornwall East Switching Station at Nelsonville to a point on Applicant's existing Pleasant Valley-Millwood right-of-way.

(18) From Carmel to Millwood the power produced at the Cornwall project should be carried on a new 345 kilovolt, double-circuit line located on a new 250 foot right-of-way adjacent to Applicant's existing right-of-way from Carmel to Millwood.

(19) The route provided for in Finding (17) would cross relatively few highways, would traverse relatively undeveloped but wooded areas, and should follow a course along contours and avoid the crests of hills.

(20) The project upper reservoir would be located some 2 miles from, and west of, the Hudson River and the project powerhouse would be located along and immediately adjacent to the Hudson River in the Village of Cornwall, which is immediately north of the Hudson Highlands.

(21) The Hudson Highlands is an area of unusual natural beauty, great historical and artistic significance and of exceptional recreational opportunities. There are important historical remains and reconstructions at points along the Hudson River from Newburgh to West Point, but no such remains or reconstructions are in the immediate vicinity of the project works.

(22) The construction of the project upper reservoir would not adversely affect, to any significant extent, the natural beauty, the historical significance, or the recreational opportunities of the area in which it would be situate, but the recreational advantages of such area would be enhanced thereby.

(23) The construction of the project power plant would not adversely affect, to any significant extent, the natural beauty, the historical significance, or the recreational opportunities of the area in which such plant would be situate.

(24) The construction of the project transmission lines, as authorized herein, would not adversely affect, to any significant extent, the natural beauty, the historical significance, or the recreational oportunities of the area through which such transmission lines would be constructed.

(25) The view of the project power plant from the north would not be significantly impaired as the river in this area is wide and the structures would be low and colored to simulate the natural rock of the mountainside.

(26) The construction of the Cornwall East Switching Station at Nelsonville would not adversely affect the view from the parade grounds of the U.S. Military Academy at West Point, New York.

(27) The steps taken and proposed by the Applicant to preserve aesthetic, historical and recreational values, including the expenditure of substantial sums for submarine and underground cable, satisfy the public interest standard embodied in Section 10(a) of the Federal Power Act.

(28) The Applicant has assumed the responsibility for the expenditure of substantial sums in aid of the expansion of recreational resources and the preservation of scenic values.

(29) The water resources of the Village of Cornwall would be augmented and improved as a result of the project.

(30) As a result of the project, lands of the Palisades Interstate Park Commission in the watershed behind Storm King Mountain will be augmented by at least 150 acres.

(31) Subject to the terms and conditions hereinafter imposed, the proposed project is best adapted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water power development and for other beneficial public uses, including recreational purposes.

(32) The Cornwall Project is desirable and justified in the public interest for the purpose of developing the Hudson River for the use or benefit of interstate or foreign commerce. If the licensee cannot acquire by contract or pledge the properties required for the Cornwall Project or the right to use or damage the lands or properties of others necessary to the construction, maintenance or operation of the Cornwall Project, including the project transmission line, it may acquire the same by the exercise of the right of eminent domain in the District Court of the United States for the Southern District of New York or in the courts of the State of New York.

ORDER

WHEREFORE, *it is ordered*, subject to review by the Commission on appeal, or upon its own motion, as provided by the Commission's Rules of Practice and Procedure, that:

(A) This license is issued to Consolidated Edison Company of New York, Inc. (hereinafter referred to as the Licensee) under Section 4(e) of the Federal Power Act for a period of 50 years, effective as of the first day of the month in which acknowledgment of acceptance thereof is filed with the Commission by the Licensee for the construction, operation and maintenance of Project No. 2338, to be known as the Cornwall Pumped-Storage Development, on the Hudson River, a navigable water of the United States, in the village of Cornwall and Towns of Cornwall and Highlands, New York, and subject to the terms and conditions of the Act which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Proposed Project No. 2338 consists of:

(i) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interests therein are owned or held by the Licensee or by the United States; the general location of such project area being shown and described by certain exhibits which formed part of the application for license, or amendment thereof, and which are designated and described as follows:

Hearing Exhibit No.	*Title*
15	Sections & Details (Exclusive of Typical Dike Detail).
18	General Map.
19	Site Plan.
20	Plan-Penstocks and Station.
21	Cross Section of Penstock and Station.
36	Proposed Dike Design (Dike 3 Facing Clove Creek).
38	Proposed Dike Crest, Dikes 1, 2, 4 and 5.
39	Proposed Dike Crest & Toe Detail—Dike 3.
22A	Cornwall East Switching Station, Modified Plan.
23A	Cornwall East Switching Station, Modified Elevation.
License Exhibit No.	
M	General Description of Equipment in three sheets.
J	Project Transmission, filed as part of the application for license on January 29, 1963.

(ii) The Cornwall project, with provisions for future enlargement will be a high head pumped-storage development located on the Hudson River approximately 40 miles north of New York City, in part in the Village of Cornwall and in part in the Towns of Cornwall and Highlands, and in Orange, Putnam and Westchester Counties, New York. A portion of the power tunnels and the penstock manifold, will occupy subsurface lands within the Palisades Interstate Park but the powerhouse will be so located that the surface facilities will be outside of the Park.

The project will consist of an upper reservoir, will utilize the Hudson River as a lower reservoir, a continuous water passage between the reservoirs, reversible pump-turbine and motor-generator units and other auxiliary facilities. The units would generally act as motor-pumps and use of off-peak energy furnished from non-project steam-electric or other facilities to pump water from the Hudson River to the upper reservoir. This cycle of operation would be repeated daily when the plant is in operation and advantage of week-end storage could also be utilized. The plant could also be kept idle or partially loaded, or spinning without water, as a power reserve for the applicant's and other loads in the area.

The *Upper Reservoir* would be created in the Hudson Highlands by forming a basin through the construction of five dikes, and would have available storage capacity of about 25,000 acre-feet between elevations 1160 and 1000 feet. The dikes would be constructed initially so that they could be raised in the future to provide for a maximum water surface elevation of 1210 feet.

The *Lower Reservoir* would be the natural Hudson River which, at Cornwall, is essentially an estuary of the Atlantic Ocean with semi-diurnal tides and widths in excess of a mile. The reservoir has unlimited storage capacity with water surface at about zero feet elevation.

The *Water Passage* initially, would consist of a concrete lined tunnel, through granite, 40 feet inside diameter and about 10,000 feet long, a concrete lined subsurface manifold, and eight steel lined penstocks. Water from the upper reservoir would be conveyed through the tunnel, thence through the manifold, and through the penstocks to the pumping-generating station.

The tunnel and penstocks will be designed initially to accommodate the future maximum water surface of 1210 feet. A future tunnel and penstocks could be added later to accommodate an additional installation of about 1,000,000 kilowatts.

The *Pumping-Generating* Station, initially, would consist of an outdoor-type station with eight pumping-generating units each rated at 225,000 kilowatts but capable of generating about 250,000 kilowatts (total capability of 2,000,000 kilowatts) under a gross head of about 1060 feet. When generating the station will discharge between about 25,000 and 27,000 cfs, and when pumping the station will draw between about 14,000 and 22,000 cfs. The transformation from motor-generator voltage of about 17 kilovolts to 345 kilovolts will be by transformers located at the station and delivered by submarine cables, with two spare pipes of adequate capacity alongside the pipes enclosing the cable, across the river and thence by underground cable to the switching station located on the east side of the Hudson River about ¾ mile from the river bank. The pumping-generating station could later be extended by adding 1,000,000 kilowatts of capability (total capability of 3,000,000 kilowatts).

The overhead *Transmission System* will commence at the switching station and will consist of a double circuit 345 kilovolt overhead transmission line extending about 24 miles to the Applicant's existing Millwood substation, and thence continuing south about 19 miles on an existing right-of-way to the new Sprain Brook substation. The new transmission line right-of-way 250 feet in width will be able to accommodate a second 345 kilovolt overhead transmission line.

(C) This license is also subject, to the extent applicable, to the terms and conditions set forth in Form L-4 (Revised June 1, 1964) entitled "Terms and Conditions of License for Unconstructed Project Affecting Navigable Waters of the United States" (32 FPC 839), which terms and conditions, designated as Articles 1 through 29, which are made a part hereof, and subject to the following special conditions set forth herein as additional articles:

Article 30. The Licensee shall install a water measuring weir below the dike which extends between Mt. Misery and White Horse Mountain and shall measure at least once each week during the first year of operations the seepage flow and turbidity, if any. The measurements shall be recorded, plotted, and reported to the Commission each three months period for the first year of operations and thereafter when requested by the Commission or its authorized representative.

Article 31. The Licensee shall employ three qualified independent consultants for the purpose of making recommendations as to the measures to be taken with respect to the foundations of the upper reservoir dikes, the general reservoir area and the final design and specifications for the dikes and to advise Licensee as to other protective measures. A report and recommendations of the consultants shall be submitted for Commission consideration when the Licensee files revised Exhibits J and L for Commission approval. The Commission reserves the right to require the Licensee to take appropriate measures to assure the water tightness of the upper reservoir and other protective measures deemed necessary for the Project.

Article 32. The designs of the tunnel intake, and of the crest and toe of the dike facing Clove Creek, shall be based on hydraulic model studies and the crest of this dike shall be at least three feet lower in elevation than all of the other dikes.

Article 33. The Licensee shall submit in accordance with the Commission's rules and regulations revised Exhibits J and L and M showing the final designs of the project works and the Licensee shall not begin construction of the project structures until the Commission has approved such exhibits.

Article 34. The Licensee shall submit for Commission approval Exhibits F and K prepared in accordance with the Commission's Rules and Regulations, within two years from the effective date of this license.

Article 35. The Licensee shall locate the overhead transmission facilities, in a manner causing the least possible impact upon the interest of local communities and property owners, when possible traversing generally wooded and sparsely settled areas and where necessary to cross ridges following valleys and draws to the maximum extent possible, on a route extending easterly from the Cornwall East Switching Station at Nelsonville to a point in the Town of Carmel adjacent to Licensee's Pleasant Valley right-of-way and thence paralleling that right-of-way in a southerly direction to Millwood all on a new 250 foot right of way to be acquired. From Millwood to Sprain Brook the overhead transmission lines shall occupy an existing right-of-way of the Licensee.

Article 36. The Licensee shall within one year from the date of issuance of the license file with the Commission for approval plans of the transmission facilities of the project, including provision for the ultimate capacity of at least 3000 mw, and shall not begin construction of the initial transmission facilities until the Commission has approved such plans. Nothing in this article shall be construed to prohibit the Licensee from acquiring lands, rights-of-way and any other necessary permits and approval prior to the approval by the Commission of the final plans for the transmission facilities of the project, nor shall it be construed as approval by the Commission of any such acquisitions.

Article 37. The Licensee shall construct, maintain, and operate or arrange for the construction, maintenance, and operation of a fish screen or fish screening device on the pump intake as prescribed by the Commission.

Article 38. The Licensee shall continue to consult with the Palisades Interstate Park Commission and other appropriate federal, state and local agencies, and cooperate with such agencies with respect to means for the preservation of the natural beauty and improvement of the recreational opportunities of the project area and shall within one year from the date of issuance of the License, file with the Commission a statement of the steps which have been taken and which are planned for future consummation, toward the accomplishment thereof.

Article 39. The licensee shall construct, maintain and operate, such protective devices and shall comply with such reasonable modifications of the project structures and operation in the interest of fish and wildlife resources, *provided* that such modifications shall be consistent with the primary purpose of the project, as may be prescribed hereafter by the Commission upon its own motion after notice and opportunity for hearing and upon a finding that such modifications are necessary and desirable and consistent with the provisions of the Act, and, *provided further* that, subsequent to the approval of the final design drawings prior to commencement of construction no modifications, of project structures in the interest of fish and wildlife resources which involve a change in the location, height, or main structure of a dike, or a major change in generating units, or a rearrangement or relocation of a power house, or major changes in the tailrace structure shall be required.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Federal Power Act, and failure to file such an application shall constitute

acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

EDWARD B. MARSH,
Presiding Examiner.

OPINION NO. 453

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP64-228

OPINION AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 9, 1965)[*]

Syllabus

1. **Reviewing evidence, Commission is convinced of Northern's justification in concluding that direct sale was required if Cooperative's plant was to be located in its service area. P. 503.**
2. **Commission *rejects* contention that certificate be granted only on condition that sale be made by Northern to one of its jurisdictional distribution customers for resale to industrial consumer. P. 503.**
3. **While not adverse to such condition (note 2, *supra*) in proper circumstances, Commission *notes* that here local distributor in area where plant will be located has withdrawn as party and expressed no further interest in sale, thus no purpose would be served by condition. P. 503.**
4. **Argument that under Northern's proposal jurisdictional customers who must operate under its tariff are precluded from competing for such sales on equal footing with pipeline supplier is without merit. P. 503.**
5. **Northern's 33.1 cent rate for direct sale to cooperative does not discriminate against its jurisdictional distributor customers. P. 504.**
6. **Purpose of minimum bill is to make certain seller recovers sufficient revenues from sales to provide adequate protection. P. 504.**
7. **Contracts providing for sale of gas at a unit price per Mcf customarily provide for an annual minimum as opposed to monthly minimum bill. PP. 504, 505.**
8. **Evidence shows that should Cooperative operate at only 75 percent load factor or pay only minimum annual bill, Northern would still recover an excess of cost of making sale, including a 6¼ percent rate of return. P. 505.**
9. **There is nothing unusual or objectionable in Northern's contract terms with Cooperative. P. 505.**
10. **Argument that contract with Cooperative, insofar as it grants moratorium respecting effective date of annual minimum bill, unjustly discriminates against Northern's jurisdictional customers, is *rejected;* Commission *notes* pipeline affords utility customers similar consideration in its IPS Rate Schedule. P. 505.**
11. **Section 157.7(c)(7)(ii) of Regulations is not applicable here—budget-type procedures are, in effect, an advance approval (without hearing) of all transactions which may take place under certificate; here hearing has been held with opportunity for participation by interested persons. P. 505.**
12. **There is an element of risk involved in every certificate proceeding since**

---

[*]Initial decision appears on p. 507.

economic feasibility of each proposal is dependent upon accuracy of market estimates. Here degree of risk is reasonable. P. 506.

13. Argument that method for allocating costs in rate cases may operate to reduce Cooperative's fair share of demand costs assumes inflexible application of allocation methods—should such fears materialize, Commission does not foreclose possibility of interveners raising these objections in any future rate case involving Northern. P. 506.

14. Commission *issues* certificate of public convenience and necessity under Section 7 of the Natural Gas Act.

F. Vinson Roach, J. C. Osborne, D. B. O'Brien, Justin R. Wolf, C. A. Case, Jr., and *Stanley Wanger* for Northern Natural Gas Company.

Jack F. Kinney for Iowa Public Service Company.

Charles V. Shannon and *Louis Flax* for Michigan Wisconsin Pipe Line Company.

John W. Scott and *Louis L. DaPra* for Minnesota Valley Natural Gas Company.

John F. Gaston for Iowa Electric Light & Power Company.

Mark W. Putney for Iowa Power and Light Company.

George C. Mastor for Minneapolis Gas Company.

Richard C. Steffey for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

BLACK, *Commissioner:*

This is a proceeding pursuant to Section 7 of the Natural Gas Act, on an application filed by Northern Natural Gas Company (Northern) for a certificate authorizing the construction and operation of facilities to enable Northern to transport and deliver to Consumers Cooperative Association (CCA)[1] 14,000 Mcf of gas per day on a firm basis for use in a proposed new anhydrous ammonia fertilizer plant near Fort Dodge, Iowa. Northern proposes to sell firm gas to CCA for a price of 33.1 cents per Mcf and interruptible gas, if any, at a price of 25.0 cents per Mcf. CCA would be obligated to take or pay for a volume of gas equal to 75 percent load factor purchases of the contract demand of 14,000 Mcf on an annual basis.

Following intervention by six of Northern's distributor customers[2] in opposition to certification, the matter was set for hearing before Presiding Examiner Lande. The Examiner, in his initial decision, issued November 9, 1964, would grant the instant application finding that all necessary conventional elements of the public convenience and necessity have been established by Northern; that the service proposed is required by the public convenience and necessity; and, that Northern's direct sale to CCA will not discriminate against Northern's jurisdictional distributor customers in any way. The matter is now before us on exceptions to the Examiner's decision filed by Iowa Electric Light & Power Company and Iowa Power and Light Company (Iowa Companies) and Minnesota Valley Natural Gas Company (Minn. Valley). Briefs opposing exceptions were filed by Northern and by the Commission staff.

---

[1] CCA is a farmer-owned and farmer-controlled business enterprise comprised of 1,799 member associations serving 400,000 farmers.

[2] Iowa Electric Light & Power Company, Iowa Power and Light Company, Iowa Public Service Company, Michigan Wisconsin Pipe Line Company, Minneapolis Gas Company, and Minnesota Valley Natural Gas Company.

The principal issue raised by interveners is the question of the Commission's policy regarding industrial sales by interstate pipelines in areas served by its distributor customers. Ancillary to this is the question whether, in the circumstances of this case, Northern's proposed rate schedule for CCA will be unduly discriminatory against Northern's distributor customers.

The Iowa Companies argue that the sale to CCA should be made by one of Northern's jurisdictional distributor customers which is ready, willing and able to make the sale in line with the Commission's holding in *Southern Natural Gas Company*, Docket No. G–19632, 25 FPC 925 (1961). Additionally, they contend that Northern's agreement with CCA is unduly preferential because it does not contain any minimum monthly billing provisions such as obligates each of Northern's jurisdictional distributor customers under Northern's FPC Gas Tariffs. Minn. Valley, excepting to the Examiner's decision in its entirety, principally maintains that the facts presented by the instant record compel the conclusion that Northern's application should be denied, or if a certificate is granted, it should be conditioned to provide that the sale and delivery of gas to CCA be made by the local distributor in the Fort Dodge area.

Upon review of the record in this proceeding, the parties briefs and their exceptions to the Examiner's decision, we are of the opinion that the Examiner's findings and conclusions are correct and, except as set forth below, further discussion of the Examiner's decision is unnecessary.

First we address ourselves to the issue whether Commission precedent requires that Northern refrain from making direct sales to CCA. In the *Southern* case, *supra*, we expressed the policy that, in general, the wholesale-supplier should not compete directly with its distributor customers. But, contrary to the argument of the intervening distributors here, the Commission in *Southern* expressly refrained from establishing a policy that industrial sales should always be made by a distributor. Rather, we concluded there that each such case should be resolved on its individual merits.

We must ask the question whether the sale here in issue would, or could have been made through any of Northern's distributor customers. The record shows that CCA was considering several sites, including some in areas not served by Northern. The lowest price offered CCA by Northern's distributor customers was 34.64 cents per Mcf. Iowa Power and Light Company, an intervener here, actively competed for the sale but proposed a southwestern Iowa location where lower priced gas was available from Natural Gas Pipeline Company of America (Natural), Northern's pipeline competitor. On review of the evidence we are convinced that Northern was justified in concluding that a direct sale was required if CCA's plant was to be located in its area of service.

The Iowa Companies and Minn. Valley contend that Northern's application should be granted only on the condition that the sale be made by Northern to one of its jurisdictional distribution customers for resale to the industrial consumer. We have not been adverse to such a condition in the proper circumstance. But, here the distributor responsible for the area of service in which CCA's plant will be located has withdrawn as a party to this case and expressed no further interest in the sale. We have no basis to assume that it is ready, willing and able to make this sale on terms likely to result in its consummation. Thus, no purpose would be served by such a condition in this proceeding.

The Iowa Companies state ". . . the vice in Northern's proposal under the proposed agreement is that, by its very nature, jurisdictional customers who must operate under the terms of Northern's FPC Gas Tariff are absolutely precluded from competing for such sales on an equal footing with their own pipeline supplier." This argument is without merit. We note, for instance Northern's filing on December 23, 1964, in Docket No. CP65-188 which involves an application to construct and operate facilities and to transport and sell 22,000 Mcf of gas per day to Iowa Public Service Company for resale to Terra Chemicals International, Inc., for use by the latter in a proposed 600-ton per day fertilizer plant to be located south of Sioux City, Iowa. Pursuant to contract, Iowa Public Service Company agrees to sell gas to Terra Chemicals for 33.1 cents per Mcf, the same price at which Northern proposes to sell gas to CCA in this proceeding.

Rate Discrimination

The Interveners except to the Examiner's refusal to find that Northern's proposed 33.1 cent rate to CCA is discriminatory against its jurisdictional distributor customers. They contend that Northern's Zone 2 demand and commodity rates for service in the Fort Dodge area on March 16, 1964, the date Northern contracted with CCA, were $3.092 and 22.64 cents per Mcf, respectively, or about 33.3 cents per Mcf when computed at CCA's contemplated 95% load factor operation. They contend that the Examiner incorrectly compared the price offered to CCA with the price charged a jurisdictional customer on the basis of Northern's rates which became effective July 27, 1964. We agree with the Examiner that Northern's 33.1 cent rate to CCA does not discriminate against its jurisdictional distributor customers.

In our order of January 2, 1964, in *Northern Natural Gas Company*, Docket No. RP64-15, 31 FPC 7, copies of which were served on Minn. Valley and the Iowa Companies, Northern was required to reduce the demand component of its rates for resale service by an annual amount of $1,500,000 if the Federal Corporate Income Tax rate should be reduced from 52 to 50%. Pursuant to this order, on February 28, 1964, Northern filed with the Commission a request to reduce its resale rates effective March 27, 1964, by 7.9 cents per Mcf in the demand component. Under Northern's reduced rates effective March 27, 1964, a jurisdictional customer could purchase gas from Northern in Zone 2 for 33.07 cents per Mcf at 95% load factor which is less than Northern's offer of 33.1 cents per Mcf to CCA. The Examiner was correct in finding that Northern's offer of 33.1 cents to CCA did not discriminate against Northern's jurisdictional customers in any way. Effective July 27, 1964, Northern's resale rates were again reduced, establishing Zone 2 demand and commodity components of $2,915 and 22.64 cents per Mcf, respectively, or 32.2 cents per Mcf at 95% load factor.

Minn. Valley and the Iowa Companies object to the Examiner's having found that the 75% load factor minimum annual bill in Northern's contract with CCA was non-discriminatory. Northern's jurisdictional customers are obligated to pay a minimum monthly bill consisting of the demand charge multiplied by the contract demand volume of gas provided for in the respective service agreements between Northern and its jurisdictional customers. They agree, however, that if a jurisdictional customer were purchasing a contract demand volume of 14,000 Mcf at 95% load factor, that such customers monthly minimum demand charge, when totaled on an annual basis, would be only $489,720 as compared to CCA's annual minimum bill obligation amounting to $1,268,558. The Iowa Companies and Minn. Valley contend that this is not a valid comparison of minimum bills because when CCA has paid its annual minimum bill of $1,268,558 it is entitled thereby to purchase 75% of its contract demand for an entire year without paying any additional charge, whereas the jurisdictional customer might have to pay its minimum bill of $489,720 without having taken a single cubic foot of gas.

The purpose of a minimum bill is to make certain that the seller recovers sufficient revenues from the sales to protect itself adequately. Contracts providing for the sale of gas at a unit price per Mcf customarily provide for an annual minimum bill as opposed to a monthly minimum bill. When gas is sold on a unit charge for each Mcf of gas the seller is not so much concerned about a monthly return as it is in making certain that sufficient revenues are recovered from the sale to reimburse the purchase gas costs and amortize its investment in the sales facilities. Traditionally, this Commission has certificated facilities for such sales where the sale will reimburse the pipeline's costs of providing service including an adequate return on its investment. The evidence shows that even if CCA should operate at only 75% load factor or should pay only the minimum annual bill, Northern would still recover $38,150 in excess of the cost of making the sale including a 6¼% rate of return. We agree with the Examiner that there is nothing unusual or objectionable in Northern's contract terms with CCA.

Minn. Valley argues that Northern's contract with CCA, insofar as it grants CCA a moratorium of 120 days before the annual minimum bill becomes effective, unjustly discriminates against Northern's jurisdictional customers. This argument must be rejected. Northern affords its distributor customers similar consideration in its Initial Period Service Rate Schedule. The IPS Rate Schedule not only permits the distributor to purchase gas for distribution to new communities between initial deliveries and October 27 of a given year without incurring any obligation to pay a minimum bill, but also provides that the gas may be purchased for no charge other than the payment of the commodity rate for each Mcf of gas delivered.

The Interveners, in their briefs on exceptions, argue that the Commission should consider Northern's application in light of Section 157.7(c)(7)(ii) of the Commission Regulations. This Section provides: "No gas shall be delivered to a direct industrial customer to replace or supplement gas purchased by such customer from a distributor or other natural gas company without the written consent of such distributor or natural gas company, or to serve a new direct industrial customer in the franchise or service area of the distributor without the express consent of the distributor." This section of the Regulations relates to budget-type applications proposing sales which will not amount to more than 100,000 Mcf annually or involve an investment of more than $300,000 in the case of any single customer. The budget-type procedures are, in effect, an advance approval of all transactions which may take place thereunder, without a hearing in each individual transaction. The Regulations, therefore, provide for screening out situations of possible difficulty or controversy. In this case a hearing has been held in which all interested persons have had an opportunity to participate.

The Iowa Companies object that they will be assessed in a future rate case with some of the costs to Northern of making the sale to CCA without any benefits accruing to them from such additional costs. They argue that the Commission's use of methods for allocating between costs assignable to demand and commodity components may operate to reduce CCA's fair share of the system demand costs. Since jurisdictional customers buy their peak requirements in order to satisfy the demands on their system during the coldest days of the year, they, of necessity, take most of the gas during the system peak period. In contrast, they say, under the contract herein proposed, CCA may not be on the line on these particular days or may be operating at lower load factor at such time, in which case the fixed costs allocated to the demand component would fall substantially upon jurisdictional customers.

The Examiner notes that if, contrary to the evidence of record, CCA should operate its plant at such a low load factor that Northern would receive no more than its minimum annual bill, *i.e.*, at a 75% load factor ". . . the costs allocated to the jurisdictional sales would be increased since the ration of jurisdictional sales to total sales would be greater due to the reduction of non-jurisdictional sales to CCA at a 75% load factor instead of 95% load factor. . . ." There is, of course, an element of risk involved in every certificate proceeding since the economic feasibility of each proposal is dependent upon the accuracy of the market estimates. Here the degree of risk is reasonable. The uncontroverted testimony shows that CCA's plant will operate at a 95% load factor on an annual basis. The Iowa Companies' objections and the Examiner's concern assumes an inflexible application of our allocation methods. We recently expressed pointed dissatisfaction with any such rigidity in allocation methods.[8] We do not, of course, foreclose the possibility of the interveners raising these objections in any future rate case involving Northern should their fears materialize. It is apparent that it would not be either just or reasonable to require Northern's jurisdictional customers and ultimately their consumers, to pay for a large part of facilities built to implement a private transaction between Northern and its directly served industrial customer.

All exceptions, arguments and requests not discussed or granted herein have been considered but are without substantial support in the record or a reasonable basis in law or are immaterial to the proper disposition of this proceeding and should be denied. The Presiding Examiner's initial decision issued herein on November 19, 1964, should, to the extent consistent with this Opinion and Order, be adopted by the Commission as of the date of issuance of the Opinion and Order, to constitute herewith our decision in this proceeding.

The Commission further finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-280, 3 FPC 967.

(2) The facilities hereinbefore described, as more fully described in the application and exhibits in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

---

[8] *United Fuel Gas Company*, Docket No. G-20270; *Atlantic Seaboard Corporation*, Docket No. G-20272, Opinion No. 430, issued June 2, 1964, 31 FPC 1342; *Wisconsin Michigan Power Company*, Docket No. E-7026, Opinion No. 432, issued June 9, 1964, 31 FPC 1445, pp. 1453-1456.

(6) The evidence does not support the interveners' contentions that permitting Applicant to make the proposed direct sale through its Peoples Natural Gas Division, instead of requiring that the sale be made through one of Applicant's jurisdictional customers, will discriminate against the Applicant's jurisdictional customers in any way.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Northern Natural Gas Company, to construct and operate the proposed facilities and to deliver natural gas as hereinbefore described, all as more fully described in the application and exhibits in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (1), (c) (2), (c) (3), (c) (4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 1 year from the date on which this order issues.

(D) This certificate shall not entitle the industrial customer to whom firm deliveries are authorized herein to any priorities or rights to additional gas for meeting any future increases in its requirements at the expense of resale customers desiring to acquire additional gas to meet any future increases in their requirements.

(E) The initial decision of the Presiding Examiner issued November 19, 1964, is, to the extent consistent with this Opinion, hereby adopted by the Commission as of the date of issuance of this Opinion, to constitute with this Opinion the Commission's decision in this proceeding.

(F) The exceptions filed to the Presiding Examiner's decision are denied.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY UNDER THE NATURAL GAS ACT

(Issued November 19, 1964)

LANDE, *Presiding Examiner:* This proceeding is about an application by the Northern Natural Gas Company, hereinafter referred to as the Applicant or Northern, for a certificate of public convenience and necessity under Section 7 of the Natural Gas Act.

In its application filed April 6, 1964, Applicant requested a certificate of public convenience and necessity authorizing it to construct and operate certain facilities in order that Applicant will be able to initiate a main-line direct firm sale of 14,000 Mcf of natural gas per day to The Consumers Cooperative Association (CCA) which proposes to construct a new 400-ton per day anhydrous ammonia fertilizer plant near Fort Dodge, Iowa. The facilities Applicant proposes to construct consist of: 27.3 miles of 30-inch main-line loops; a 4,000-horsepower compressor unit to be installed at its Beatrice, Nebraska, compressor station; replacement of the impellers and miscellaneous piping at its Tescott, Kansas, station; about one mile of 8-inch branch line, and a sales measuring station in the vicinity of CCA's proposed plant—all at an estimated cost of $4,188,900, including interest and overheads.

Under an agreement between Applicant and CCA dated March 16, 1964, Applicant will sell firm gas to CCA for a price of 33.1 cents per Mcf and interruptible gas, if any, for a price of 25 cents per Mcf. The contract provides that CCA is obligated to take or pay for a volume of gas equal to 75 percent load factor purchases of the contract demand of 14,000 Mcf on an annual basis. After the date of initial delivery the rate for firm service will increase or decrease in the same amount that Applicant's Zone 2 rate, when computed as a unit rate at 100 percent load factor, is permitted by the Federal Power Commission to increase or decrease.

CCA expects to operate its proposed plant so as to purchase gas at a 95 percent load factor, such estimate being based on CCA's experience in operating its plant at Hastings, Nebraska, where the processing is similar, and the gas usage is at 95 percent load factor.

CCA is a farmer-owned and farmer-controlled business which has the purpose of providing supplies to farmers so as to save them money. CCA has 1,799 member associations which in turn serve 400,000 farmers. CCA wants a fertilizer plant at Fort Dodge because a plant at Fort Dodge would be situated in the heart of a heavy corn-producing area.

Six of Applicant's customers filed timely petitions to intervene: Iowa Electric Light & Power Company, Iowa Power and Light Company, Iowa Public Service Company, Michigan Wisconsin Pipe Line Company, Minneapolis Gas Company, and Minnesota Valley Natural Gas Company. By order issued August 7, 1964, the Commission permitted the six aforesaid companies to intervene. The hearing commenced on September 1, 1964, and was completed in four days. After all interested parties had cross-examined Applicant's witnesses, except four geological witnesses as to whom cross-examination was waived, Iowa Public Service Company, one of the intervenors who appeared at the hearing in opposition to the granting of Northern's application, presented one witness who was cross-examined.

When all testimony and exhibits had been received in evidence, counsel for Applicant moved for omission of the intermediate decision procedure. The Examiner denied the motion in view of opposition voiced by counsel for four of the intervenors. The Examiner then fixed the dates for filing of briefs, as follows: Northern's initial brief by September 18, 1964; Intervenors' and Staff's briefs by October 16, 1964; and Applicant's reply brief by October 26, 1964.

The Issues

The principal issues in this proceeding are:

1. Whether Commission precedent requires that industrial sales should always be made by a distributor.
2. Whether Applicant met the traditional tests as to the public convenience and necessity, *i.e.*, adequacy of gas supply, markets, engineering, financing, and economic feasibility, and
3. Whether granting Northern's application to serve CCA directly will be unduly discriminatory to the intervenors, namely, the jurisdictional customers of Northern.

Precedents for Industrial Sales

The distribution company intervenors claim that Commission precedent requires that Northern refrain from selling directly to CCA—a large industrial customer. Intervenors contend that if Northern is permitted to offer potential large volume industrial customers lower prices and better conditions of service than are available to jurisdictional customers, Northern will be able to capture all the future customers in that class. Local distributors cannot sell at prices cheaper than they buy at and cannot furnish conditions of service which are not available to them. Intervenors further argue that the factual situation in this proceeding is comparable to the one involved in the *Southern Natural Gas Company*, Docket No. G-19632, 25 FPC 925 (1961), where the pipeline, Southern, made a Section 7 application to serve two proposed large industrial customers. Although the local distributing company, South Atlantic, was willing to serve the customers, it concurred in and endorsed the sale being made by the pipeline. The Presiding Examiner's decision, which was affirmed by the Commission, denied the pipeline's application to serve the two industrial customers but granted its request for a certificate to construct additional compressor facilities on the condition that the local distributing company render the service to the two industrial customers. Intervenors argue that this sets a precedent that industrial sales must be made by a distributor.

The above is rebutted by Applicant, who argues convincingly that there is no Commission precedent establishing a policy that industrial sales should always be made by a distributor. Applicant points out that in *Southern Natural Gas Company*, 25 FPC 925, 927, the Commission expressly refrained from setting such a precedent by stating:

> * * * In other words, [the Examiner] has not declared, nor do we declare, that the distributor in all cases, rather than the interstate pipeline, should be permitted to make proposed industrial sales. We shall continue to consider each case on the merits as it arises and make the determinations which are commensurate with the facts and law applicable thereto.

Applicant cites specific instances where the Commission has approved the supplier's application without ordering that the proposed industrial sale be made by the local distributor rather than by the pipeline itself. For example, in *American Louisiana Pipe Line Company*, 30 FPC 698, 702–706, the Commission authorized Panhandle Eastern Pipe Line Company to sell gas to the B. F. Goodrich Co. near Ft. Wayne, Indiana, instead of requiring such sale to be made by the local distributor.

After reviewing the *Southern Natural* case and the other cases cited by the Intervenors, and rebutted by the Applicant, the Examiner concurs with the position taken by Staff Counsel, namely, that there is no binding Commission precedent that an industrial sale which cannot be made economically through a distributor needs be lost to a competing pipeline. Each application should be decided on the merits of each case as it arises.

At the threshold, the evidence raises the question whether Northern would have lost the CCA business had it left the matter to the disposition of the distributors. Northern submits that if it had not seized the initiative, the pertinent industrial service would have eventually gone to its competitor, the Natural Gas Pipeline Company of America. Applicant's policy witness Sampson testified that Northern will compete with another pipeline company which is trying to obtain sales in Northern's market territory and it will similarly compete with a distributor which tries to obtain industrial sales in its market territory by purchasing gas from another pipeline company. However, he assures us that Northern will not compete with its own distributors for sales which can be made from the distribution facilities of such customers. It becomes important to ascertain whether at the time Northern entered into agreement with CCA, the pipeline was justified in assuming that the terms of the contract were essential to the retention of this industrial customer.

The Examiner does not agree with the contentions of Minnesota Valley Natural Gas Company and other intervenors, that CCA already having plants in Nebraska and Kansas had no other place to go to but Fort Dodge in order to serve the great concentration of cooperatives in the area north of Des Moines. The threat of competition to Northern must be evaluated on the basis of the competitive considerations as they appeared reasonable in light of the evidence known to Applicant in March 1964. Intervenors theorize that Fort Dodge was the only location seriously considered by CCA and that therefore it was unnecessary and improper for Northern to negotiate a direct sales contract with CCA to assure the plant's location adjacent to Northern's pipeline system. The Examiner does not accept this theory in view of the uncontradicted and competent testimony of witness Zurbuchen, CCA's experienced general manager, who clearly stated on the record that if CCA had not been able to obtain the price and terms contained in its contract with Northern, the plant would have been located not near Fort Dodge but elsewhere. The Examiner does not accept Iowa Power and Light Company's calculations of "freight savings", because they are based on the erroneous assumption that CCA will not sell fertilizer west and south of Fort Dodge. The record shows that Fort Dodge was selected as the plant site just before the March 16, 1964, contract was signed. CCA's letter to Northern of January 15, 1964, showed interest in southwest Iowa as well as the Fort Dodge-Boone areas. CCA's rejection of Northern's January 18, 1964, offer of 34 cents per Mcf for firm gas justified Northern's conclusion that Natural Gas Pipeline Company of America and its distributors were offering a lower price to CCA in southwest Iowa and southeastern Nebraska with which distributors supplied by Northern could not profitably compete. The record shows further that Iowa Power and Light Company continued active negotiations with CCA until the end of February 1964 for the sale of gas to be supplied from the Natural Gas Pipeline system at a southwest Iowa location. Gas could be purchased more cheaply in southwestern Iowa than in the central part of the State. For example, Iowa Power and Light Company offered to sell gas to CCA for 31.27 cents per Mcf and American Gas Company offered gas to CCA for 30.99 cents per Mcf. These companies would have purchased this low-priced gas for sale to CCA from Natural Gas Pipeline Company of America instead of from Northern. Natural itself offered to sell gas directly to CCA for a price of only 30 cents per Mcf, but that offer was made for a plant to be located in Nebraska and CCA was not interested in locating a plant in Nebraska since it already has a plant at Hastings, Nebraska, which is capable of serving that market territory. Since Natural Gas Pipeline has a lower rate structure than Northern, the Examiner finds that Northern was justified in concluding during March 1964 that a direct sale was required if CCA's plant were to be located in the area served by Northern's pipeline system. It is futile to speculate on the basis of hindsight just what CCA would have actually done if Northern had not lowered its initial price for firm gas to 33.1 cents per Mcf and to 25 cents per Mcf for interruptible gas. The Examiner finds that on the basis of the known facts at the time the parties entered into the agreement Northern acted reasonably and its steps to preserve its share of the market were fully justified.

The Conventional Requirements

Northern has met the statutory requirements of Section 7(e), as well as all of the administrative tests of public convenience and necessity enunciated by the Commission.

Applicant has demonstrated that it has an adequate gas supply. Its competent witnesses testified that Northern's dedicated gas reserves as of December 31, 1963, are properly estimated to be 12.250 trillion cubic feet and will enable Northern to meet the peak day and average day requirements of its expanded system markets, including the proposed deliveries to CCA, for a period of 12 years without any deficiency. All parties agreed to excuse Northern's gas supply witnesses without cross-examination. The design and estimated cost of Northern's proposed facilities were fully supported by the testimony of competent engineering witnesses. The reasonableness of Northern's design and estimated cost of facilities are not controverted. Northern's market is, of course, assured by the contract dated March 16, 1964, providing for the purchase by CCA of 14,000 Mcf per day of natural gas on a firm basis. CCA's desire to build an anhydrous fertilizer plant near Fort Dodge and the estimated consumption of natural gas in that plant on a monthly and annual basis are fully supported by the testimony of witness Sampson and witness Zurbuchen, experienced with similar type fertilizer plants owned and operated by CCA and other cooperative associations. Additionally, Northern's ability to finance and the economic feasibility of its project have been amply proven. The evidence compares revenues from the estimated sales of firm gas at 95 percent load factor with all costs properly attributable to making the proposed deliveries to CCA, including return computed at 6.25 percent and an appropriate allowance for Federal and State income taxes. Exhibit 7 demonstrates that revenues will exceed the cost of service, including return, by $210,000. Exhibit 11 demonstrates that if firm sales were estimated at 75 percent load factor, revenues would exceed the cost of service, including return, by $38,150. This evidence was never seriously controverted. No question was raised by any party concerning Northern's ability to pay for the construction of the proposed facilities from cash on hand generated from operations.

The Examiner is satisfied that Northern's proposed sale of gas to CCA and the construction and operation of the new fertilizer plant at Fort Dodge will have a beneficial effect on the general public in the north half of the State of Iowa by providing a much needed stimulant to the economic and industrial development of that region, which has suffered in recent years by an out-migration of population due to lack of industry. The plant output will be sold to Iowa and southern Minnesota farmers through local farm cooperatives at a considerable savings both to CCA and the farmers themselves.

Accordingly, but for the alleged discrimination issue discussed below, it is clear in this record that within the purview of Section 7(e) Northern has demonstrated that its project will serve the public interest.

No Rate Discrimination

Intervenors contend that Northern unduly discriminates against its jurisdictional customers in favor of CCA. The Minneapolis Gas Company highlighted these arguments as follows:

> Price—At the time the contract with CCA was executed, the price of 33.1¢ per Mcf of firm gas was substantially less than jurisdictional customers in Zone 2 would pay under Northern's FPC Gas Tariff at load factors from 75% to 95%. Under Northern's present rates, the 33.1¢ per Mcf price is less than Zone 2 jurisdictional customers would pay at load factors from 75% to 90%.
>
> CCA is required to pay only a 75% minimum annual bill—Northern's jurisdictional customers must pay a 100% minimum monthly bill. During the first four months of service Northern waived the minimum bill provision

for CCA—the minimum bill provision for jurisdictional customers from the date of initial service.

Delivery pressure—Northern guaranteed CCA delivery pressure of not less than 500 pounds psig. Under Northern's Tariff, jurisdictional customers are guaranteed only 50 pounds psig.

Odorant—Northern agreed to odorize the gas for CCA without charge. A jurisdictional customer must add odorant at its own expense.

At the outset it is noted that the record shows that when the contract was executed Northern anticipated filing a further rate reduction under its FPC Gas Tariff as a result of settlement conferences concerning reductions in rates charged Northern by certain of its producer suppliers. Certain of the customer intervenors participated in those settlement conferences and had the same knowledge as Northern. This rate reduction was filed August 5, 1964, and on September 8, 1964, by letter order issued by the Secretary of the Commission, was made effective as of July 27, 1964. This rate filing reduces the unit cost of gas purchased at 95 percent load factor by a jurisdictional customer in Rate Zone 2 to 32.73 cents per Mcf. CCA receives no benefit from this rate reduction. Article V of the CCA contract provides that the initial price of 33.1 cents per Mcf will be adjusted *after* actual deliveries to CCA are commenced in accordance with any future upward or downward adjustment in Northern's Zone 2 jurisdictional rate. This provision assures that the price paid by CCA will always be higher than the unit cost of gas to a jurisdictional customer of Northern located in Rate Zone 2 purchasing at 95 percent load factor.

Moreover, CCA is obligated under the contract to pay a minimum annual bill which is much higher than the minimum annual bill obligation of a jurisdictional customer in Rate Zone 2. Northern's CD–2 rate schedule obligates the jurisdictional customer to pay only the demand charge. Accordingly, the minimum annual bill of a jurisdictional customer in Rate Zone 2 purchasing 14,000 Mcf of contract demand under the rates effective July 27, 1964, is $489,720, as compared to a minimum bill obligation of CCA of $1,268,558. It should be noted that CCA is not required to take any volume of gas under its contract with Northern. Likewise, a jurisdictional customer is not required to take any volume of gas under Northern's CD rate schedules. Iowa Public Service Company (IPS) presented evidence showing that a jurisdictional customer would lose $88,840 annually if it tried to sell gas to CCA for 33.1 cents per Mcf on the assumption that the plant would operate at 95 percent load factor and instead the plant should actually operate at such a low load factor that only the minimum annual 75 percent load factor revenue could be recovered. On the other hand, Northern's counsel showed on cross-examination of IPS' witness that if Northern should sell 14,000 Mcf to a jurisdictional customer and that customer purchase its gas at only 60 percent load factor, Northern would lose $88,558 annually in making sales at 60 percent load factor as compared with selling 14,000 Mcf to CCA under its 75 percent load factor minimum annual bill.

These comparisons, depending upon the load factors assumed, have been tried in an attempt to support arguments to the effect that the sale to CCA discriminates against Northern's jurisdictional customers. However, any meaningful comparisons between the rate which jurisdictional customers must pay and the rate that Northern is proposing to charge CCA must be made on an assumption that the plant will operate at the 95 percent load factor assumed by Northern and completely supported by the testimony and exhibits in this proceeding. Sundry computations comparing CCA's unit cost at various assumed load factors with the unit cost of gas purchased at various load factors by a jurisdictional customer in Rate Zone 2 are not helpful in this proceeding. This record properly supports a 95 percent load factor purchase by CCA and any other assumption is merely conjectural.

The Examiner concurs with Staff Counsel's views that since there has been no showing that Northern's offer of a price of 33.1 cents to CCA is discriminatory, Minneapolis Gas Company's reliance on *El Paso Natural Gas Company*, 22 FPC 900, 903, and *Michigan Consolidated Gas Co.* v. *Panhandle Eastern Pipe Line Co.*, 173 F. 2d 784, 789, is not helpful because it is unnecessary for the Commission to require that a nonexistent discrimination be removed.

The intervenors contended on cross-examination that there was no showing that Northern's Peoples Division could economically make the sale to CCA because Peoples Division will be increasing its contract demand purchases from Northern by 14,000 Mcf in order to make the sale to CCA. Peoples Division is Northern's distribution arm and not a separate corporate entity. Northern's policy witness could think of no incremental costs which Peoples Division would incur as a result of making the sale to CCA. Therefore it is redundant for Northern to make a showing of economic feasibility on behalf of Peoples Division.

The Examiner finds that Northern has shown that the sale will return up to $210,670 of excess incremental revenues over incremental cost of service, including allowance for a 6¼ percent rate of return. Because of the competitive nature of the sale, no jurisdictional customer would be able to make a greater than marginal showing of economic feasibility.

Staff Counsel properly points out that, in *Michigan Wisconsin Pipe Line Company*, Opinion No. 441, Docket No. CP64–109, issued September 14, 1964, 32 FPC 737, at p. 740, the Commission held that a showing of economic feasibility by a distributor was sufficient to justify a sale of boiler fuel from the distributor's viewpoint even though the proof consisted of demonstrating fuel savings to the distributor in the form of intercompany profits passed on exclusively to the distributor's electric customers. Under this same reasoning, Northern properly demonstrated that the sale is economically feasible to Peoples Division which is a part of that same corporate entity.

The next contention which intervenors make is that they have a minimum monthly bill consisting of the demand charge whereas CCA has a 75 percent load factor minimum annual bill. They argue that it is discriminatory for Northern to grant CCA a minimum *annual* bill while requiring of them a minimum *monthly* bill. However, as Northern's policy witness pointed out convincingly, a monthly minimum bill is required in a contract where the customer is obligated to pay both a demand and a commodity rate because the seller wishes to clarify the fact that the purchaser is at least obligated to pay a minimum bill consisting of the monthly demand charge. On the other hand, when the contract requires only a unit or commodity rate to be paid per Mcf delivered, the seller is interested in making sure that it receives a minimum amount of revenue so that the negotiations between the parties become a contest in which the seller wants a high annual minimum bill and the purchaser wants a low annual minimum bill.

The Examiner agrees with the Staff that since Northern's sales to its jurisdictional customers are made under a demand and commodity rate, there is nothing unusual about the fact that the jurisdictional customers are required to pay a monthly minimum bill consisting of the demand charge whereas CCA is required to pay a minimum annual bill equivalent to 75 percent load factor purchases of its contract demand. Notice should also be taken of the fact that CCA's minimum annual bill is 2.6 times greater than the jurisdictional customers' minimum monthly bills when the latter are considered on an annual basis. Furthermore, since Northern obtained a minimum annual bill from CCA which is sufficient to recover excess incremental revenues over the incremental costs associated with making the sale, including allowance for a rate of return, there appears to be no basis in the record for the intervenors' claim that the 75 percent annual minimum bill in CCA's contract with Northern discriminates against them in any way.

Throughout the hearing the intervenors contended that CCA might purchase large volumes of interruptible gas from Northern. CCA's witness explained that CCA desired to have a provision in its contract with Northern permitting it to purchase interruptible gas if its requirements should exceed its contract demand of 14,000 Mcf on any day when Northern had interruptible gas available. Despite the fact that Northern's engineering witness stated that the 8-inch branch line to be constructed to serve CCA's plant will have sufficient capacity to deliver up to 7,000 Mcf per day of interruptible gas if it should be available on the main line, CCA's witness stated emphatically that it would be impossible for the plant to use 7,000 Mcf per day of interruptible gas and he estimated that the plant could not be expected to use more than 1,500 Mcf per day of interruptible gas. This testimony is consistent with the experience of Allied Chemical and Dye Corporation's fertilizer plant. Furthermore, witnesses for both CCA and Northern assured the intervenors that if any interruptible volumes were to be purchased by CCA, such purchases would be excluded from the firm purchases which are to be used in calculating CCA's minimum annual bill. There is no merit to intervenors' claim that Northern will sell large volumes of interruptible gas to CCA or that the small volumes of interruptible gas which might be sold to CCA would in any way be detrimental to the intervenors.

Intervenors argue that Northern's guarantee to CCA of a delivery pressure of 500 pounds is discriminatory. However, the record shows that Northern offered to supply Iowa-Illinois Gas and Electric Company 500 pounds pressure near Northern's mainline for resale to CCA and that similar arrangements would be made available to other utility customers at delivery points near Northern's mainline for the purpose of delivering additional contract demand for resale to an industrial customer.

Intervenors complain that the minimum bill provision under the CCA contract is not operative in the first one hundred twenty days after sales are commenced. They allege that distributors are not offered a similar moratorium by Northern under its tariff. However, under Northern's tariff any distributor initiating service to a new community prior to October 27 in any given year is temporarily relieved of a minimum bill obligation. Between the date service to such community is commenced and October 27 of that year, the distributor may purchase gas for such community under Northern's IPS rate schedules which contain no minimum bill obligation. The IPS rate schedules are frequently used by many distributors including some of the intervenors in this case.

Intervenors argue that they will be assessed in a future rate case with some of the costs to Northern of making the sale to CCA without any benefits accruing to them from such additional costs. As was properly pointed out by Northern's policy witness, if there should be a rate proceeding in which costs are allocated between jurisdictional and nonjurisdictional sales, the sales to CCA would be included in the nonjurisdictional portion of Northern's business and Northern's stockholders would have to recover the total costs associated with such nonjurisdictional sales. Since the incremental facilities would have been constructed to make the sales to CCA and would have been used for that purpose, the jurisdictional customers would not be assessed any additional costs in a prospective rate case if Northern is permitted to serve CCA as proposed in this proceeding.

It is only on the assumption that CCA operates at some load factor lower than 95 percent that Northern's jurisdictional customers could theoretically be adversely affected in any way by Northern's being authorized to serve CCA. If, contrary to the evidence of record, it is assumed that CCA will operate at such a low load factor that the only revenues recoverable from the sale are those related to CCA's 75 percent minimum annual bill, then in a rate case, there would be included nonjurisdictional business representing 75 percent load factor operation of the plant. Thus, the costs allocated to the jurisdictional customers would be increased since the ratio of jurisdictional sales to total sales would be greater due to the reduction of nonjurisdictional sales to CCA at 75 percent load factor instead of 95 percent load factor.

Of course, if the sale were being made by a jurisdictional customer and CAA's plant returned only revenues equal to 75 percent load factor operation, the nonjurisdictional business would be required to pay a slightly higher proportion of total costs because of the failure of CCA to purchase at 95 percent load factor. There would also be a slight adverse effect on all jurisdictional customers as a result of the 75 percent load factor volume of sales. Failure of any sale to materialize as estimated will result in fewer units of sales over which to distribute system costs and these units must be paid for by both jurisdictional and nonjurisdictional business in the ratio that each type of business relates to total sales. However, we are now dealing with a possibility which, on the basis of the evidence, is not likely to occur. We can never be certain of future estimates. In administrative proceedings we frequently face such possibilities. To put it in the language of Staff Counsel, certificate proceedings are always plagued by the fact that the economic feasibility of every proposal depends on the accuracy with which the markets have been estimated. There are very few cases in which the markets have been estimated with any more conviction that they will materialize than was demonstrated by the witnesses in this proceeding. Furthermore, as heretofore pointed out, the experience by both Northern and CCA shows that fertilizer plants, such as that proposed for construction by CCA, have consistently operated at 95 percent load factor. Consequently, there is no reason to prejudge this proposed sale by making an assumption that in any subsequent rate case there will be included in the nonjurisdictional sales any volumes of gas less than the 4,854,500 Mcf associated with sales to CCA at 95 percent load factor.

Intervenors complain that Northern agreed to odorize the gas for CCA without charge, while jurisdictional customers must add odorant at their own expense. The Examiner finds that the Natural Gas Act does not require that gas be sold to different classes of customers at the same price and upon identical conditions. CCA's requirements are those of a direct industrial user and are different from those of a gas distributor.

In summary, the record is clear that if Northern had not offered the price and terms set forth in the contract dated March 16, 1964, the low bidders for the CCA load would have been Natural Gas Pipeline Company of America, or distributors served from Natural's system, and the obvious benefits from the CCA sale, which will now accrue to Northern and the distributors and customers served from its pipeline, would have been lost. This outweighs by far the allegations about the possible, but not probable, very minor disadvantage to jurisdictional customers should certain business forecasts fail to materialize. Applicant had demonstrated that the proposed sales will be beneficial to the Fort Dodge area as well as to Northern's system operations. However, the local distributor concerned has not shown that it is likely to be aggrieved in any way if Northern makes the proposed sale to CCA. Since service to CCA's proposed plant would require Northern to construct the same facilities to serve the plant through its Peoples Division as would be required to serve the plant through one of Northern's jurisdictional customers, no question regarding the construction of duplicative pipeline facilities is involved in this proceeding.

CONCLUSION

Northern's application should be granted because Applicant has demonstrated that the public convenience and necessity require that Northern be authorized to construct and operate the facilities requested in its application in order to render firm service to CCA's proposed plant. The evidence fails to support the intervenors' contentions that permitting Northern to make a direct sale through its Peoples Division, instead of requiring that the sale be made through one of Northern's jurisdictional customers, will discriminate against the jurisdictional customers in any way. Consistent with the *Southern Natural* case *supra*, this type of application is to be decided on the merits of each case as it arises. The "merits" heretofore recited fully justify the granting of Northern's application to serve CCA as proposed in this proceeding.

ADDITIONAL FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in this proceeding, including the pleadings, the evidence adduced and the briefs filed, it has been found and concluded, in addition to the findings and conclusions heretofore stated, that:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-280, 3 FPC 967.

(2) The facilities hereinbefore described, as more fully described in the application and exhibits in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) The evidence does not support the intervenors' contentions that permitting Applicant to make the proposed direct sale through its Peoples Natural Gas Division, instead of requiring that the sale be made through one of Applicant's jurisdictional customers, will discriminate against the Applicant's jurisdictional customers in any way.

ORDER

WHEREFORE, *it is ordered*, subject to review by the Commission on appeal or upon its own motion, as provided by its Rules of Practice and Procedure that:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Northern Natural Gas Company, to construct and operate the proposed facilities and to deliver natural gas as hereinbefore described, all as more fully described in the application and exhibits in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 1 year from the date on which this order issues.

(D) This certificate shall not entitle the industrial customer to whom firm deliveries are authorized herein to any priorities or rights to additional gas for meeting any future increases in its requirements at the expense of resale customers desiring to acquire additional gas to meet any future increases in their requirements.

ALLEN C. LANDE,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP65-51; SUN OIL COMPANY, DOCKET NO. G-8592

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND AMENDING CERTIFICATE

(Issued March 9, 1965)

On August 20, 1964, Southern Natural Gas Company (Applicant) filed in Docket No. CP65-51, an application, as supplemented on October 7, 1964, and amended on December 21, 1964, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas to United Gas Pipe Line Company (United) from additional acreage assigned to Applicant in the Maxie-Pistol Ridge Field, Forrest County, Mississippi by Sun Oil Company (Sun) and Marathon Oil Company (Marathon), all as more fully set forth in the application.

Specifically, Applicant proposes to sell to United Gas Pipe Line Company natural gas produced from leases assigned to Applicant in the Maxie-Pistol Ridge Field, Forrest County, Mississippi by Sun and Marathon. Sales will be made under Applicant's rate schedule F-1, at 20 cents per Mcf at 15.025 psia.

Sun has not requested amendment of its certificate authorization in Docket No. G-8592 to delete the subject acreage assigned to Applicant.

After due notice no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 4, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplement and amendment thereto, and exhibits, submitted in support of the authorization sought, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Southern Natural Gas Company, a Delaware corporation, having its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 6, 1942, in Docket No. G-296 (3 FPC 822).

(2) The proposed sale of natural gas in interstate commerce, to United Gas Pipe Line Company, as hereinbefore described and as more fully described in the application, supplement, and amendment thereto and exhibits filed in this proceeding are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The proposed sale of natural gas is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(6) The certificate of public convenience and necessity heretofore issued in Docket No. G-8592 should be amended as hereinafter ordered.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, Southern Natural Gas Company, in this proceeding authorizing the sale of natural gas in interstate commerce, as hereinbefore described, all as more fully described in the application supplement and amendment thereto and exhibits filed in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) The certificate of public convenience and necessity heretofore issued to Sun Oil Company in Docket No. G-8592 is amended to delete therefrom any acreage assigned to Applicant that is the subject of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

COLORADO INTERSTATE GAS COMPANY, DOCKET NO. CP65-144; EL PASO NATURAL GAS COMPANY, DOCKET NO. CP65-153

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND ACCEPTING TARIFF FILINGS

(Issued March 10, 1965)

On November 20, 1964, Colorado Interstate Gas Company (Colorado), filed in Docket No. CP65-144 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas, on an interruptible basis, to El Paso Natural Gas Company (El Paso) and the construction and operation of pipeline facilities in Moore County, Texas, all as more fully set forth in the application on file with the Commission.

On November 24, 1964, El Paso Natural Gas Company filed in Docket No. CP65-153 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities to implement the purchase and receipt of natural gas from Colorado, all as more fully set forth in the application on file with the Commission.

Colorado proposes to sell to El Paso, on an interruptible basis at a price of 18 cents per Mcf, such volumes of natural gas as El Paso desires to purchase up to 100,000 Mcf per day as Colorado might have available from time to time, pursuant to an agreement of the parties dated November 9, 1964, which terminates March 1, 1968.

The delivery of gas will be made at two points on Colorado's Fourway-to-Kit Carson 20-inch main line in Moore County, Texas. Gas will be delivered at an existing interconnection of Colorado's line and Northern Natural Gas Company's (Northern Natural) 30-inch line and a proposed delivery point at the intersection of Colorado's line and El Paso's 18-inch Panoma line (Fourway delivery point).

Colorado will construct and operate a meter station at the Fourway delivery point and operate an existing station at the Northern Natural delivery point. Colorado will deliver gas to Northern Natural for El Paso's account as part of El Paso's authorized daily exchange volume with Northern Natural. El Paso seeks authority to construct and operate a tap and side-gate valve at the Fourway point and to include volumes of gas delivered to Northern Natural as a part of its existing exchange agreement.

The estimated cost of Colorado's facilities is $45,596, and will be financed with current funds. The estimated cost of El Paso's facilities is $2,300, and will be financed with current funds.

Service under the proposals is to be rendered in accordance with Colorado's Rate Schedule X-22 and El Paso's revision to its exchange agreement with Northern Natural. Rate Schedule X-22 constitutes the interruptible sales agreement between Colorado and El Paso, and El Paso's filing reflects the extension of the termination date for deliveries at the Northern Natural delivery point.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the applications has been filed.

At a hearing held on March 4, 1965, the Commission on its own motion received and made a part of the record in these proceedings all evidence, including the applications and exhibits, submitted in support of the authorization sought herein and upon consideration of the record,

The Commission finds:

(1) Colorado Interstate Gas Company, a Delaware corporation having its principal place of business in Colorado Springs, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued June 5, 1945, in Docket No. G–294 (4 FPC 936).

(2) El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 11, 1944, in Docket No. G–288 (4 FPC 486).

(3) The proposed construction and operation of facilities and sale and delivery of natural gas, as hereinbefore described and as more fully described in the applications and exhibits in these proceedings, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The aforesaid proposed construction and operation of facilities and sale and delivery of natural gas are required by the public convenience and necessity, and certificates therefor should be issued as hereinafter ordered and conditioned.

(5) Colorado and El Paso are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(6) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder be conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(7) Colorado's related Rate Schedule X–22 to its FPC Gas Tariff, Second Revised Volume No. 2 and El Paso's Tenth Revised Sheet No. 13 to its FPC Gas Tariff, Third Revised Volume No. 2 should be accepted for filing to become effective upon the date of issuance of this order.

The Commission orders:

(A) Certificates of public convenience and necessity be and the same are hereby issued to Colorado and El Paso, authorizing the construction and operation of facilities and the sale and delivery of natural gas, as hereinbefore described and as more fully described in the applications in these proceedings, upon the terms and conditions of this order.

(B) The certificates issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Colorado's and El Paso's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation and the transportation of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

(D) Colorado's related Rate Schedule X–22 to its FPC Gas Tariff, Second Revised Volume No. 2 and El Paso's Tenth Revised Sheet No. 13 to its FPC Gas Tariff, Third Revised Volume No. 2, are hereby accepted for filing to become effective upon the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, PROJECT NO. 2470

ORDER ISSUING PRELIMINARY PERMIT

(Issued March 10, 1965)

Application was filed on May 1, 1964 by Public Service Company of New Hampshire (Applicant) of Manchester, New Hampshire, for a preliminary permit under Section 4(f) of the Federal Power Act (Act) for proposed Project No. 2470, known as the Pontook Project, to be located on the Androscoggin River in the Towns of Berlin, Milan, Dummer, Cambridge, and Errol, all in the County of Coos, New Hampshire.

The Secretary of the Army and the Chief of Engineers have advised that the Corps of Engineers is making a study of the Androscoggin River for flood control and allied purposes and that a report thereon is nearly completed. It may recommend a multiple-purpose project, including flood control, hydroelectric power, and recreation, at the Pontook site on the Androscoggin. The Corps has no objection to the issuance of the preliminary permit herein applied for.

The Department of the Interior, in commenting on the application, while suggesting that the Commission may wish to defer action on the application pending completion of the aforementioned study by the Corps of Engineers, recommended for inclusion in any preliminary permit for the project a condition for the protection, conservation and enhancement of fish and wildlife resources, and to mitigate and compensate for the loss of or damage to such resources.

The Department of Health, Education, and Welfare, in commenting on the application, offered no objection to the granting of a preliminary permit for the project but suggested that water pollution control be given careful consideration in any study of the proposed project.

We do not believe the considerations which lead the Commission to deny the application of the Georgia Power Company for a preliminary permit for Project No. 2303 (27 FPC 663) are applicable here. In the *Georgia Power* case the Corps of Engineers had issued a report of a comprehensive study of the river recommending Federal construction of the project. The applicant had not shown to our satisfaction that it proposed to make any significant studies not already accomplished by the Corps, and we accordingly concluded that ". . . The studies which the preliminary permit are designed to encourage have thus already been made at public expense and should therefore be available on equal basis to any party who may wish to develop these water resources in the event Federal development is not authorized." In the present case, the Corps of Engineers has not completed its report. Moreover, the applicant has indicated that it intends to make studies in addition to those being made by the Corps of Engineers because the project it is investigating involves different sites, a larger installation of capacity and different market considerations. See Opinion No. 454 issued today in Georgia Power Company, Project No. 2413 (33 FPC 934).

Applicant requests a preliminary permit for a period of 36 months. It appears appropriate, however, that the period of the permit should be 24 months as hereinafter provided.

No construction is authorized under a preliminary permit. Such a permit gives the permittee, during the period of the permit, the right of priority of application for license over non-Federal parties while the permittee undertakes the necessary studies and examinations required by Section 9 of the Federal Power Act in order to determine the economic feasibility of the proposed project, the means of securing the necessary financial arrangements for construction, the market for power, and all other information necessary for inclusion in an application for license, should one be applied for under the permit. A license would authorize construction of a project.

The issuance of a preliminary permit for Project No. 2470 as hereinafter provided shall not in any way be construed as precluding the exercise of Commission action contemplated under the provisions of Section 7(b) of the Federal Power Act.

The Commission finds:

(1) Applicant is a corporation organized under the laws of the State of New Hampshire.

(2) Public notice of the filing of the application has been given as required by the Act. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

The Commission orders:

(A) This preliminary permit is hereby issued to Public Service Company of New Hampshire (Permittee) of Manchester, New Hampshire, for a period of 24 months, effective as of March 1, 1965, for the sole purpose of maintaining priority of application for license for Project No. 2470, subject to the terms and conditions of the Act which is incorporated herein by reference as a part of this permit, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2470 as presently proposed prior to permittee's studies would cousist of: (1) a dam tentatively 3,600 feet long and 125 feet high, with crest elevation of 1,225 feet, made up of concrete powerhouse and spillway sections, earth embankments and a log sluice; (2) a reservoir with pool elevation not yet determined; (3) a powerhouse having an ultimate installed capacity of 262,500 kw; (4) a re-regulating reservoir formed by a dam about eight miles downstream with provision for appropriate water control gates and a log sluice.

(C) This permit is also subject to the terms and conditions set forth in Form P-1 entitled "Terms and Conditions of Preliminary Permit" (16 FPC 1303–1305) which terms and conditions, designated as Articles 1 through 8, are attached hereto and made a part hereof; and further subject to the following special conditions set forth herein as additional articles:

Article 9. The Permittee shall submit at the close of each six month period, from the effective date of the preliminary permit, to the Regional Engineer, Federal Power Commission, New York, having supervision over the project, or to such other officer as the Commission may designate, accurate statements of the work accomplished during the period, and of the work contemplated under the preliminary permit for the ensuing period.

Article 10. The Permittee shall, during the period of the project planning, consult with and cooperate with the New Hampshire Fish and Game Department, the U.S. Fish and Wildlife Service, the Department of Health, Education, and Welfare, and the Corps of Engineers, in order that due consideration may be given to the interest of these agencies in the preservation of the resources of the area which may be affected by the proposed project.

Article 11. The Permittee shall, for the purpose of assuring the cooperation required by the terms of the permit, designate a liaison officer to act for the Permittee in keeping the several agencies specified in this permit currently informed, and such liaison officer shall communicate with such agencies within 60 days from the date of issuance of this permit.

Article 12. The Permittee shall, during the early period of project planning, consult with Federal, State, and local agencies having an interest in outdoor recreation on project lands and waters, in the preparation of an "Exhibit R" required for the filing of an application for license pursuant to Section 4.41 of the Commission's regulations under the Federal Power Act.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this preliminary permit. In acknowledgment of the acceptance of this preliminary permit, it shall be signed for the Permittee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNITED FUEL GAS COMPANY, DOCKET NO. CP63–305

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND ACCEPTING SUPERSEDING SERVICE AGREEMENT FOR FILING

(Issued March 10, 1965)

On December 28, 1964, United Fuel Gas Company (Applicant) filed in Docket No. CP63–305 an application to amend the Commission's order issued August 10, 1964, 32 FPC 573, in said docket to delete therefrom certain volumetric limitations imposed upon the sale of natural gas, authorized by said order, to Union Oil and Gas, Inc. (Union), all as more fully set forth in the application to amend in this proceeding.

The order of August 10, 1964, among other things, authorized Applicant to construct and operate certain facilities and to sell natural gas to Union. Ordering paragraph (B) of said order provided that the volumes of gas sold to Union should not exceed 500 Mcf per day. Ordering paragraph (F) of said order required Applicant to file a service agreement fixing a contract demand of 500 Mcf per day for Union.

Applicant states that Union seeks an increase in the contract demand from 500 Mcf per day to 600 Mcf per day in order to have an adequate supply of gas to serve its customers during the 1964–65 winter heating season; therefore, Applicant requests herein that the volumetric limitations imposed by ordering paragraphs (B) and (F) be deleted from the order of August 10, 1964.

Concurrently with the filing of the instant application to amend, Applicant tendered for filing a superseding service agreement with Union dated December 1, 1964, which agreement reflects an increase in the contract demand from 500 Mcf per day to 600 Mcf per day. Applicant requests that said agreement be accepted for filing to become effective December 1, 1964.

Concurrently with the filing of the instant application to amend, Applicant tendered for filing a superseding service agreement with Union dated December 1, 1964, which agreement reflects an increase in the contract demand from 500 Mcf per day to 600 Mcf per day. Applicant requests that said agreement be accepted for filing to become effective December 1, 1964.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on January 14, 1965 (30 F.R. 508). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and public convenience and necessity require that the Commission's order issued August 10, 1964, in Docket No. CP63-305 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued August 10, 1964, in Docket No. CP63-305 be and the same is hereby amended to delete therefrom the volumetric limitations contained in ordering paragraphs (B) and (F) of said order, all as hereinbefore described and as set forth in the application to amend.

(B) The superseding service agreement between Applicant and Union, dated December 1, 1964, is hereby accepted for filing to become effective December 1, 1964.

(C) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP65-183

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT

(Issued March 10, 1965)

On December 21, 1964, United Gas Pipe Line Company (Applicant), 1525 Fairfield Avenue, Shreveport, Louisiana, filed in Docket No. CP65-183 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain facilities, all as more fully set forth in the application on file with the Commission.

Applicant seeks permission and approval to abandon and remove facilities now being used to serve Livon Gas Company (Livon), Shelby County Texas, consisting of an orifice meter station located where Applicant's 22-inch line crosses the line of Livon in Shelby County, Texas.

The application states that the abandonment is sought due to the fact that Livon now has a sufficient gas supply of its own to fulfill its needs. The application further states that by letter agreement dated November 13, 1964, Applicant and Livon have agreed to a termination of the service involved.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 4, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 10, 1943, in Docket No. G-232 (3 FPC 863).

(2) The facilities proposed to be abandoned, as hereinbefore described and as more fully described in the application herein, are used in the transportation

and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and approval thereof should be granted as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment of the facilities hereinbefore described, as more fully set forth in the application in this proceeding, are hereby granted to Applicant.

(B) Applicant shall advise the Commission of the date of abandonment of the facilities authorized in paragraph (A) above within ten days of such abandonment.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP65-199

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued March 10, 1965)

On December 31, 1964, United Gas Pipe Line Company (Applicant), Shreveport, Louisiana, filed in Docket No. CP65-199 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon and remove one 2-inch positive meter station located on Applicant's 16-inch Latex-Fort Worth line in Van Zandt County, Texas, all as more fully set forth in the application.

The facility sought to be abandoned was formerly used in providing service to Pan American Petroleum Corporation (Pan American). However, by letter dated November 18, 1964, Applicant and Pan American agreed to the cancellation of their contract to be effective December 1, 1964. This termination results from the fact that Pan American now obtains its fuel requirements from its nearby Edgewood Gas Processing Plant.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 4, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G-232 (3 FPC 863).

(2) The facility to be abandoned, as hereinbefore described, as more fully described in the application in this proceeding, is subject to the jurisdiction of the Commission and abandonment of such facility is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facility is permitted by the public convenience and necessity and approval therefor should be granted as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, as more fully described in the application in this proceeding, be and the same are hereby granted.

(B) Applicant shall advise the Commission of the date of said abandonment within ten days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

WISCONSIN MICHIGAN POWER COMPANY, PROJECT NO. 2357

ORDER ISSUING LICENSE (MAJOR)

(Issued March 10, 1965)*

Application was filed on April 8, 1963, by Wisconsin Michigan Power Company (Applicant) of Appleton, Wisconsin, for a license under Section 4(e) of the Federal Power Act (Act) for constructed major Project No. 2357, known as the White Rapids Project, located on the Menominee River in Menominee County, Michigan, and Marinette County, Wisconsin, about 7 miles southeast of Amburg, Wisconsin. No lands of the United States are affected by the project.

Construction of the project was commenced in 1926 and it was placed in operation in 1927. Applicant acquired the project in December, 1937. No significant alterations or additions to the project have been made since its construction.

An application for a preliminary permit for this project was filed by White Rapids Paper Co., of Oshkosh, Wisconsin, and the Commission, by its action on June 23, 1922, declined to take jurisdiction (Second Annual Report of the Federal Power Commission, p. 151). In a proceeding on a declaration of intention filed by Applicant on April 27, 1940 under Section 23(b) of the Federal Power Act, the Commission found and determined in its Opinion No. 94, dated July 27, 1943, that the Menominee River and its tributary the Michigamme River, are navigable waters of the United States (3 FPC 449). The 1943 decision reversed the 1922 decision, with respect to the navigability of the stretch of the Menominee River involved.

This application was filed as a result of our April 25, 1962 decision concerning the Androscoggin River in which we invited the owners of all unlicensed projects to file voluntary applications for licenses (27 FPC 830). The application involves the same site and the same project as was proposed in the 1922 application, referred to above, which was rejected by the Commission for lack of jurisdiction. In the circumstances of this case we are making the effective date of this license current with its issuance.

The Secretary of the Army and the Chief of Engineers have reported that the plans of the project structures affecting navigation are satisfactory insofar as the interests of navigation are concerned.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project certain conditions in the interests of fish and wildlife and recreation.

The Department of Health, Education, and Welfare has advised that no pollution or mosquito problems will be created or intensified by the operation of the project.

While Applicant filed an Exhibit R, it has not filed a recreational use plan appropriate for approval. By Article 31 herein we are requiring Applicant to cooperate with Federal, State and local agencies in the interest of recreation in connection with the use of project lands and waters by the public and to keep us advised at intervals with respect to the results.

---

*Order issued May 3, 1965, granting rehearing for further consideration, unreported. License modified on rehearing by order issued May 4, 1966, 35 FPC 687.

The Commission finds:

(1) Applicant is a corporation organized under the laws of the State of Wisconsin, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(2) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(3) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(4) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(5) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 10,700 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable.

(6) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of the license for the project, except to the extent that they pertain to substation and transmission facilities.[1]

The Commission orders:

(A) This license is hereby issued to Wisconsin Michigan Power Company (Licensee) under Section 4(e) of the Federal Power Act (Act) for a period effective as of January 1, 1965 and terminating December 31, 1993, for the continued operation and maintenance of Project No. 2357, located on the Menominee River, a navigable water of the United States, subject to the terms and conditions of the Act, which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) The White Rapids Project No. 2357 consists of:

(i) all lands constituting the project area and included by the project boundary or the limits of which are otherwise defined, and/or interests in such lands necessary or appropriate for the purposes of the project, whether such lands or interests therein are owned or held by the Licensee or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license and which are designated and described as:

Exhibit J: (FPC No. 2357-1) "General Map."

Exhibit K: (FPC No. 2357-2) "Project Boundary and Transmission Line Location" (Exhibit K shows but Exhibit M excludes the transmission line extending southwardly from Applicant's Chalk Hill Plant, Project No. 2394).

---

[1] We are hereinafter reserving the right to determine at a later date what transmission facilities, if any, should be included in this license as a part of the project works.

(ii) project works consisting of: (1) a dam, 1,236 feet long and about 50 feet in maximum height—a composite structure made up of a concrete gravity channel segment 378 feet long flanked by clay-gravel embankment extending (at a top elevation of 723 feet m.s.l.) to the Michigan and Wisconsin banks of the river, the concrete segment consisting of a spillway section 246 feet long (controlled by 9 tainter gates 24 feet wide and 15.5 feet high) adjoining an integral-intake-powerhouse-substructure section 132 feet long; (2) a reservoir of about 465 acres; (3) a fish chute; (4) a reinforced concrete, steel, and brick powerhouse 35.5 feet wide and containing two vertical shaft generators of 3,000 kw capacity driven by Francis turbines of 4,385 horsepower capacity (under a head of 29 feet) and one generator of 2,000 kw capacity driven by a Francis turbine of 3,100 horsepower capacity; and (5) appurtenant electrical and mechanical facilities; the location, nature and character of which are delineated on the following described exhibits, except to the extent they pertain to substation and transmission facilities:

Exhibit L: Sheet 1 (FPC No. 2357-3) "General Layout"; Sheet 2 (FPC No. 2357-4) "Cross Section of Plant"; Sheet 4 (FPC No. 2357-6) "Plant Floor and Sectional Plans"; Sheet 5 (FPC No. 2357-7) "Plant Elevations"; Sheet 6 (FPC No. 2357-8) "Tainter Gate and Spillway Details"; Sheet 7 (FPC No. 2357-9) "Abutment Walls."

Exhibit M: Three typewritten pages, "General Description of Project and Equipment", except substation and transmission facilities.

(iii) all of the structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, except substation and transmission facilities, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-3 (Revised August 1, 1964), entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States," (32 FPC 1114) which terms and conditions, designated as Articles 1 through 29, are attached and made a part hereof, except Article 25 thereof, and subject to the following special conditions set forth herein as additional articles:

Article 30. The Commission reserves the right to determine at a later date what transmission facilities shall be included in this license as a part of the project.

Article 31. Licensee shall cooperate with Federal, State and local agencies in the development and maintenance of access areas and roads and such other facilities necessary for full recreational utilization by the public of project lands and waters, consistent with the terms of the license and the operation of the project. At the end of six years from the date of issuance of this license and every sixth year thereafter, Licensee shall advise the Commission of the results of cooperation with such local agencies and of further recreation development at the project.

Article 32. The Licensee shall pay to the United States the following annual charge:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. The authorized installed capacity for such purpose is 10,700 horsepower.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license to the extent indicated therein.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Commissioner Ross *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

POND'S LODGE, INC., PROJECT NO. 1413

ORDER ISSUING LICENSE (MINOR)

(Issued March 11, 1965)

Application was filed on July 17, 1964, by Pond's Lodge, Inc. (Applicant), of Island Park, Idaho, for a minor license under the Federal Power Act (Act) for Project No. 1413, located on Buffalo River, tributary to Henry's Fork of Snake River, in Fremont County, Idaho, and affecting lands of the United States within the Targhee National Forest.

The project has been under Commission licenses since October 31, 1939, the last license having expired on October 31, 1964.

The Forest Service, Department of Agriculture, in reporting on the application, offered no objection to the issuance of a new license, subject to the terms and conditions set forth in Form L–7, December 15, 1953, entitled "Terms and Conditions of License for Minor Project Affecting Lands of the United States" (17 FPC 486).

The Department of Health, Education, and Welfare has advised that the project does not presently have any adverse effects on water supply, water pollution control, or vector control, and none is anticipated.

In our order on rehearing issued February 17, 1965, in *Wisconsin Power & Light Company, Project No. 2347, et al.*, 33 FPC 275, we stated that we would have no objection to the issuance of licenses for minor projects without waiving Sections 14 and 15 of the Federal Power Act and the other provisions of the Act necessary to the effectuation of those sections, provided the minor project applications are timely supplemented pursuant to Section 4.50 of our Regulations under the Act (18 CFR § 4.50), which relates to applications for major projects. In the event the Applicant herein wishes a license in which those provisions of the Act are not waived it should so advise us within 30 days from the date of issuance of this order and file its supplemental application within 30 additional days thereafter.

The Commission finds:

(1) Applicant is a corporation organized under the laws of the State of Idaho, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(2) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(3) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(4) The issuance of a license for the project will not interfere or be inconsistent with the purposes for which the Targhee National Forest was created or acquired.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The amount of annual charges, based on 268 hp., to be paid under the license for the purpose of reimbursing the United States for the costs of administration of Part I of the Act, and for recompensing it for the use, occupancy and enjoyment of its lands by the project (8.92 acres plus a 100-foot wide transmission line right-of-way about 1.23 miles long) is reasonable as hereinafter fixed and specified.

(7) It will be in the public interest to waive pursuant to Section 10(i) of the Act, the terms and conditions contained in the following sections of Part I of the Act:

Section 4(b), except the second sentence thereof; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(c), insofar as it relates to depreciation reserves, 10(d); 10(f); 11; 12; 14, except insofar as the power of condemnation is reserved; 15; 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

(8) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

(A) This license is hereby issued under Sections 4(e) and 10(i) of the Act to Pond's Lodge, Inc. (Licensee) of Island Park, Idaho, for a period of 10 years, effective as of November 1, 1964, for the continued operation and maintenance of Project No. 1413, located on Buffalo River, tributary to Henry's Fork of Snake River, in Fremont County, Idaho, and affecting lands of the United States within the Targhee National Forest, subject to the terms and conditions of the Act insofar as not expressly waived herein, which Act is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 1413 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined.

(ii) constructed project works consisting of a rock-fill dam about 10 feet high and about 140 feet long with a concrete spillway and fishway, a wooden powerhouse containing a turbine connected to a generator with a capacity of 250 kva; a transmission line, and appurtenant electrical facilities;

the said lands and project works being more specifically shown and described by certain exhibits which are designated and described as follows:

Exhibit K: (FPC No. 1413–3) A general and detail map and plans in one sheet entitled, "Map of Buffalo Power Project", signed by Chas. Pond on June 6, 1940, and revised in accordance with applicant's letters filed April 18 and June 5, 1951.

Exhibit M: A typewritten document in one sheet entitled, "General descriptions and general specifications of mechanical, electrical, and transmission equipment," signed on November 18, 1939, by Charles Pond.

(C) This license is also subject to the terms and conditions set forth in Form L–7, December 15, 1953, entitled "Terms and Conditions of License for Minor Projects Affecting Lands of the United States" (17 FPC 486), which terms and conditions, designated as Articles 1 through 14, are attached hereto and made a part hereof; and subject to the following special condition set forth herein as an additional article:

Article 15: The Licensee shall pay to the United States the following annual charges, effective November 1, 1964:

(i) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, $13.40.

(ii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands, excluding those used only for transmission line right-of-way, $10.70.

(iii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands used for transmission line right-of-way only $9.84.

(D) The terms and conditions of the Act, which it has been found above to be in the public interest to waive, are hereby excluded from this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SOUTHERN CALIFORNIA EDISON COMPANY, PROJECT NO. 1390

ORDER PERMITTING WITHDRAWAL OF APPLICATION FOR AMENDMENT OF LICENSE

(Issued March 11, 1965)

Application was filed on May 27, 1963 by California Electric Power Company (California Electric) licensee for Project No. 1390, for amendment of the license for the project, known as Mill Creek Project, situated on Mill Creek near Mono Lake, in Mono County, California.

The application sought authorization to construct as part of the project a 55 kv transmission loop line which would bypass a section of a 55 kv transmission line which had become subject to frequent outages. The licensee proposed to eliminate service interruptions by means of the loop line and a short branch 55 kv line connecting the loop line to the bypassed section of the main transmission line at Mono Substation. The loop line was to become part of the primary transmission line. The existing transmission line poles in the section of line to be bypassed support, in addition to the main circuit, a lower voltage circuit supplying electric service to local customers which is subject to outages.

By its order issued October 1, 1963, in Docket No. E-7106, 30 FPC 942, the Commission authorized the sale by California Electric Power Company and the acquisition and merger on consolidation by Southern California Edison Company (Southern California) of certain facilities of California Electric, including the project works comprising Project No. 1390, effective as of December 31, 1963. By its order issued October 1, 1963, the Commission approved the transfer of the license for Project No. 1390, among other licenses, from California Electric to Southern California. By letter dated October 5, 1964, Southern California advised that it had decided not to construct the transmission loop line and requested that the application be cancelled.

The Commission orders:

Permission to withdraw the aforesaid application for amendment of the license for Project No. 1390, is hereby granted.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP65-189

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 11, 1965)

On December 28, 1964, United Gas Pipe Line Company (Applicant) filed in Docket No. CP65-189 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities for the sale of natural gas, all as more fully set forth in the application on file with the Commission.

Applicant proposes to construct and operate approximately 1.4 miles of 4½-inch pipe line, extending from Applicant's 20-inch Sterlington-Sarepta line to the Town of Homer Municipal Power Plant (Homer Plant), and an orifice meter station and appurtenant facilities, all located in Claiborne Parish, Louisiana, for the purpose of supplying the natural gas requirements of the Homer Plant.

The estimated volumes of natural gas involved to meet the annual and maximum day requirements of the Homer Plant for the first three years of operations are stated to be:

	First year	Second year	Third year
Annual (Mcf)	195,025	207,325	219,625
Maximum day (Mcf)	1,400	1,500	1,600

The estimated cost of Applicant's proposed construction is $41,230, and will be financed out of current working funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 11, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G–232 (3 FPC 863).

(2) The proposed construction and operation of facilities and delivery of natural gas by Applicant to the Homer Plant as hereinbefore described, and as more fully described in the application and exhibits in this proceeding are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and delivery of natural gas are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) The certificate issued hereinafter should not entitle the Homer Plant to whom firm deliveries are authorized hereinafter to any priorities or rights to additional gas for meeting any future increases in its requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to the Applicant in this proceeding, authorizing the construction and operation of facilities and the transportation and delivery of natural gas to the Homer Plant as more fully described in the application and exhibits in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid regulations within 120 days of the date on which this order issues.

(D) This certificate shall not entitle the Homer Plant to whom firm deliveries are authorized herein to any priorities or rights to additional gas for meeting any future increases in its requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

THE JUPITER CORPORATION, DOCKET NO. RI63-212; TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP65-58

ORDER DENYING AND REJECTING PETITIONS FOR RECONSIDERATION AND DENYING MOTIONS FOR CONTINUANCE

(Issued March 12, 1965)

On February 24, 1965, The Jupiter Corporation (Jupiter) filed with the Commission a telegram containing combined motions and petitions seeking relief from our order issued February 18, 1965, 33 FPC 295, and other relief.[1] In that order we deferred action on Jupiter's Petition for Declaratory Order and Motion to Dismiss Proceedings in Docket No. RI63-212, denied its Alternative Motion to Sever and Stay Proceedings and its Motion for Oral Argument and provided Jupiter an additional period of 30 days from the date of our order within which to prepare and serve its evidence in Docket No. RI63-212. In our order issued February 26, 1965, we provided that the 30-day additional period be measured from February 23, 1965, rather than from February 18, 1965. We accordingly extended the time within which Jupiter shall file and serve its evidence to March 25, 1965. On March 10, 1965, Jupiter filed still another motion for continuance.

In its filing Jupiter contends that a period of 30 days is insufficient to prepare its evidence because of the necessity of employing outside consultants and other outside personnel and therefore moves that the date for filing its evidence be set as April 26, 1965, but in no event earlier than April 12, 1965. Jupiter also petitions for rehearing of the Commission's order denying its alternative motion to sever and stay proceedings and for rehearing of the Commission's purported denial of Jupiter's Petition for Declaratory Order and Motion to Dismiss Proceedings in Docket No. RI63-212. As to the latter petition for declaratory order, Jupiter contends that denial thereof occurred, pursuant to the Commission's Rules of Practice and Procedure and ruling principles of law, by reason of the Commission's refusal to rule upon such petition and motion within 30 days after the filing thereof.

Jupiter also moves that the due date for the filing and serving of Jupiter's evidence be continued generally and be reset thereafter, if necessary, 60, and no less than 45 days after the last of the Commission's rulings on a number of matters allegedly still open before the Commission. Jupiter submits this request as an alternative to be considered only if the Commission denies its abovementioned motion for extension of time beyond the 30-day period in our order issued February 18, 1965.

Although Jupiter's filing purports to be a petition for rehearing, under Section 19 of the Natural Gas Act, of our alleged denial of its petition for declaratory order and its alternative motion to sever and stay proceedings, we do not so consider it as it is not directed to any final or appealable decision or order of the Commission. Section 1.34 of our Rules, which implements Section 19 of the Act, provides that an application for rehearing may be filed only after issuance of a final decision or order by the Commission. We will therefore treat Jupiter's petitions as petitions for reconsideration of actions or purported actions by the Commission which are not subject to court review under Section 19(b) of the Act.

---

[1] Jupiter filed and served reproduced copies of its telegraphic filing on February 26, 1965.

In support of its petition for reconsideration of our denial of its Alternative Motion to Sever and Stay Proceedings Jupiter contends that rate evidence should not be considered in the consolidated proceedings on the grounds that it will produce confusion of standards and coercive effect upon Jupiter's presentation, especially when the Commission's jurisdiction over Jupiter has not been established. Jupiter further argues that even assuming the Commission's position that rate evidence regarding Jupiter is needed in Docket No. CP65–58 is correct,[2] which Jupiter disputes, such evidence could and should be considered in the certificate case alone.

Jupiter's contention in this petition is substantially the same as it made in its alternative motion originally. The application in Docket No. CP65–58 pursuant to which Tennessee Gas Transmission Company seeks a certificate of public convenience and necessity to lease the properties of Jupiter is a unique type of application as recognized by Jupiter in one of its early pleadings. Public interest requires that before such certificate can be issued the reasonableness of lease price be determined. Thus, we determined in our order issued February 18, 1965, that no useful purpose would be served by severing the rate investigation from the certificate proceeding. In denying that motion in our order issued February 18, 1965, we fully considered Jupiter's arguments contained therein. Jupiter has presented no new facts or principles of law in its petition for reconsideration which we have not fully considered before or which upon present consideration warrant reversal of our order denying Jupiter's motion to sever and stay proceedings, or the granting of that motion.

Jupiter's contention that we have in effect denied its Petition for Declaratory Order and Motion to Dismiss the Proceedings in Docket No. RI63–212 by reason of what Jupiter claims to be a refusal by the Commission to rule upon such petition and motion within 30 days after the filing thereof is without merit. There is no provision in our Rules of Practice and Procedure that a petition for declaratory order shall be deemed denied by the Commission's failure to act thereon within 30 days after the filing thereof. Moreover the rules provide a period of 30 days for the filing of answers to all petitions, with the exception of petitions to intervene (Section 1.9(a)), and do not specify any time period within which the Commission must act on a petition for declaratory order. Nor are we aware of any "ruling principles of law" which are applicable here and which Jupiter says effectuated a denial of its petition. We have not by order denied Jupiter's petition nor can such petition be deemed to have been denied by passage of time. We have merely deferred action on it until all evidence on this issue adduced on the record was before us for consideration. There is no order of the Commission to which Jupiter's petition for rehearing of a denial of its petition for declaratory order could be directed. Jupiter's petition for rehearing is thus not properly filed under our Rules of Practice and Procedure or under any provision of the Natural Gas Act, and should be rejected.

There is no justification for granting Jupiter any further continuance of the date for filing and serving its evidence. Jupiter was originally required to file and serve its evidence on or before December 23, 1964. We have already granted several continuances totalling three months and Jupiter is presently required to file and serve its evidence on or before March 25, 1965. While Jupiter admits it did not start to prepare its evidence until the end of February, it has been under a requirement to do so at least since December 8, 1964, and the Commission staff has filed its evidence.[3]

---

[2] The Commission took this position in *The Jupiter Corporation* v. *Federal Power Commission*, USDC, N.D. of Illinois, No. 65C–228.

[3] In fact, by order issued October 30, 1964, Jupiter was directed to and required to serve its prepared testimony and exhibits on or before December 23, 1964.

In our order issued February 12, 1965, 33 FPC 204, denying Jupiter's motion for continuance, filed February 8, 1965, we stated:

> The continued delays in this § 5(a) proceeding, instituted more than two years ago are entirely unwarranted and contrary to the public interest. Jupiter's motion is no more than an effort to prescribe the order of Commission proceedings. This we cannot permit. Jupiter, if it so chooses, may refrain from filing any evidence in the proceeding. However, it cannot by its fiat unreasonably delay a proceeding which under the statute can only provide prospective relief to consumers. Accordingly, it is our conclusion that these cases proceed in accordance with the schedule set forth in our order issued February 3, 1965, and be continued as expeditiously as possible to decision by the presiding examiner on the complete record made therein.

It is appropriate here to point out that a portion of the transportation charges which Jupiter is collecting from its Rollover Field operations could eventually be determined unlawful in Docket No. RI63–212. Any charges which Jupiter collects in excess of the charge the Commission determines to be lawful in Docket No. RI63–212 are not subject to refund. The proceedings in Docket No. RI63–212 were initiated on December 5, 1962, 28 FPC 942. On balance, it is our view that Jupiter has not presented any basis for further continuance. Any further delay in these proceedings would be contrary to the public interest and the welfare of the ultimate consumers. In view of the foregoing, Jupiter's motions for continuance should be denied.

The Commission orders:

(A) Jupiter's petition for reconsideration of our denial of its motion to sever and stay these proceedings hereby is denied.

(B) Jupiter's motions for continuance hereby are denied.

(C) Jupiter's petition for rehearing of our alleged denial of its petition for declaratory order hereby is rejected.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NOS. RP65–2 AND RP65–5

ORDER APPROVING SETTLEMENT, DIRECTING THAT REVISED TARIFF SHEETS BE FILED AND TERMINATING PROCEEDINGS

(Issued March 12, 1965)

On January 28, 1965, the Presiding Examiner in the instant proceedings certified to the Commission the record herein containing a proposed settlement agreement reached by the parties at conferences held on October 13 and 14, 1964, and January 12, 13 and 25, 1965.

These proceedings involve a filing on July 6, 1964 by Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) in Docket No. RP65–2 to delete Section 7.4 from its tariff and a general investigation initiated by Commission order issued August 31, 1964 in Docket No. RP65–5, 32 FPC 676, with respect to the justness and reasonableness of the terms and conditions of Michigan Wisconsin's tariff. The order of August 31, 1964 also suspended the Company's rate filing and consolidated the two proceedings for purposes of hearing and decision.

As set out in the record and indicated in the Presiding Examiner's aforementioned certification of January 28, 1965, there were four major modifications of Michigan Wisconsin's tariff which were agreed to by the parties and these modifications appear to meet and satisfy the issues noted in our order issued August 31, 1964.

Section 7.4 of Michigan Wisconsin's Rate Schedule ACQ-1, as currently effective, permits customers buying under that rate schedule to release up to 3,000,000 Mcf of annual gas in any contract year if other customers agree to purchase such released gas. The customers releasing gas receive a credit against their demand charge of 13.75¢ per Mcf of gas released. The customers purchasing the released gas pay that 13.75¢ per Mcf plus the Commodity charge of 27.65¢, or a total of 41.4¢ per Mcf of released gas purchased. The record indicates that Michigan Consolidated Gas Company (Michigan Consolidated) has been the only customer purchasing released gas and that no other customer appears to be interested in such purchases at 41.4¢ per Mcf.

Under the agreement, it is proposed to change the amount of the demand credit from 13.75¢ per Mcf to 6.35¢, and thereby pricing the released gas to the purchasers thereof at 34 cents per Mcf. The agreement would also make customers releasing gas ineligible in the same contract year to purchase any authorized annual overrun gas at 27.65¢ per Mcf until such customers have repurchased volumes of gas equal to that previously released under Section 7.4 and have paid 34¢ per Mcf therefore. It is contemplated the reduction in the credit per Mcf of the Section 7.4 gas released and the resultant reduction in the purchase price of the gas so released will encourage a demand for released gas by customers which do not now purchase released gas. This should enable customers which desire to do so to release larger volumes of Section 7.4 gas and bring into effect a better balance between the supply and the demand of release gas.

The currently effective overrun rate schedule (OS-1) applies to daily as well as annual overrun gas at a price of 29.8¢ per Mcf for all gas delivered, regardless of the time when such delivery was made or whether such volumes were in excess of the customers' Maximum Daily Quantity (MDQ). The proposed agreement incorporates three separate overrun rate schedules to alleviate the difficulties incident to supplying annual and daily overrun service under a single rate schedule. The three rate schedules provide for Winter Daily Overrun Service (WDOS-1), Summer Daily Overrun Service (SDOS-1), and Annual Overrun Service (AOS-1). Service under these rate schedules will be available only when Michigan Wisconsin determines that it has excess gas above the requirements of its firm customers. However, in the event that Michigan Wisconsin receives requests for gas under any of these rate schedules which exceeds the supply of overrun gas available, Michigan Wisconsin shall allocate the volumes available to the customers as set out in the agreement.

Deliveries under Rate Schedule WDOS-1 relate to gas in excess of the customers MDQ during the period from December 1 through February 16, and will be billed at the 100% load factor rate of 42.1¢ per Mcf. Deliveries under Rate Schedule SDOS-1 relate to deliveries in excess of customers CD during the period from February 17 through November 30th and will be billed at the ACQ-1 commodity rate of 27.65¢ per Mcf. Deliveries under Rate Schedule AOS-1, relate to all overrun gas taken at any time during the contract year at a daily volume not in excess of the customers' CD and will also be billed at the rate of 27.65¢ per Mcf.

The presently effective tariff provides that the ACQ-1 and SGS-1 customers incur a $2.00 per Mcf penalty for unauthorized overrun gas taken in excess of 101 percent of their Annual Contract Quantity. The proposed agreement deletes the reference to 101 percent and applies the penalty to all gas taken in excess of the customers' Annual Contract Quantity. However, the term Annual Contract Quantity when utilized to assess penalties, is increased from the conventional 190 times the customers' MDQ by an amount equal to the volumes upon which daily overrun penalties have been paid during the contract year. These changes prevent customers from being subjected to both a daily and an annual overrun penalty in those instances when the unauthorized daily overrun results in an unauthorized annual overrun.

The presently effective tariff provides that in emergencies, the gas available shall be prorated on the basis of the customers' respective MDQs. The proposed agreement provides that prior to any such curtailment and in order to protect its firm customers, Michigan Wisconsin may first require that distributors reduce or discontinue service to their interruptible customers using in excess of 200 Mcf per day. The proposed settlement also provides that the proposed changes are not to become effective until the commencement of the new contract year on September 1, 1965.

As indicated by the record and heretofore noted, the proposed tariff changes were agreed to by all parties as a result of conferences between Michigan Wisconsin, its customers, the Iowa, Michigan and Wisconsin state commissions, the County of Wayne, Michigan, the Coal Interveners and our staff. Our review of the proposed settlement and the record herein indicates that the agreed upon tariff changes will benefit all customers of Michigan Wisconsin and provide added flexibility to that company's operations.

The Commission finds:

The settlement of these proceedings upon the basis herein set out and as more fully set out in the record is reasonable, proper, and in the public interest in carrying out the provisions of the Natural Gas Act, and should be approved and made effective as hereinafter provided and ordered.

The Commission orders:

(A) The settlement of these proceedings as herein found to be in the public interest is hereby approved subject to the terms and conditions hereinafter ordered.

(B) Michigan Wisconsin, subject to the approval of the Commission and subject to the applicable provisions of Section 154 of the Commission's Regulations under the Natural Gas Act, shall file the requisite revised tariff sheets to effectuate the above-referenced settlement and such tariff sheets shall be effective as of September 1, 1965.

(C) Upon compliance with the terms and conditions of this order the proceedings in Docket Nos. RP65-2 and RP65-5 shall be deemed terminated.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PEOPLES GAS AND POWER CO., INC., DOCKET NO. CP64-290

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued March 12, 1965)

On June 4, 1964, as supplemented on July 30, 1964, Peoples Gas and Power Co., Inc. (Applicant) filed in Docket No. CP64-290 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing

Texas Gas Transmission Corporation (Texas Gas) to establish physical connection of its transmission facilities with the proposed facilities of and to sell natural gas to Applicant for resale and distribution in the City of Bloomfield, Greene County, Indiana, all as more fully set forth in the application, as supplemented, in this proceeding.

Applicant proposes to construct and operate 2.27 miles of 4½-inch lateral pipeline extending from the proposed interconnection in Greene County to the corporate limits of Bloomfield. Applicant will also construct and operate the necessary distribution facilities to provide the proposed service.

The third year peak day and annual natural gas requirements for Bloomfield are estimated to be 873 Mcf and 90,035 Mcf, respectively.

The total initial estimated cost for the proposed project is $211,293, which cost will be financed by the sale of first mortgage bonds and equity capital.

On July 10, 1964, Texas Gas filed an answer to the subject application stating that it had no objection to rendering the requested service provided, among other things, that its maximum delivery obligation not exceed 873 Mcf per day.

Due notice of the filing of the application, as supplemented, and opportunity for hearing thereon has been given by publication in the Federal Register on September 18, 1964 (29 F.R. 13089). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) Texas Gas Transmission Corporation, a Delaware corporation having its principal place of business in Owensboro, Kentucky, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 30, 1949, in Docket No. G–859 (8 FPC 190).

(2) Applicant, Peoples Gas and Power Co., Inc., is a corporation duly organized and existing under the laws of the State of Indiana for the purpose of constructing and operating a natural gas distribution system in Bloomfield, Indiana, and environs.

(3) It is necessary and desirable in the public interest that Texas Gas be directed to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to sell and deliver up to 873 Mcf of natural gas per day to Applicant, as set forth in the application, as supplemented, and as hereinafter ordered and conditioned.

(4) This order should be conditioned upon Applicant being prepared to receive gas from Texas Gas, as proposed, within one year from the date on which this order issues and upon the execution of a service agreement between Applicant and Texas Gas in accordance with the Commission's Regulations under the Natural Gas Act.

(5) The requirement that Texas Gas serve Applicant, as proposed, will not place any undue burden upon Texas Gas nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Texas Gas Transmission Corporation be and it is hereby directed to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to sell and deliver up to 873 Mcf of natural gas per day to Applicant, all as hereinbefore described and as set forth in the application, as supplemented.

(B) Texas Gas shall report to the Commission in writing the date of commencement of service to Applicant.

(C) This order is conditioned upon Applicant being prepared to receive natural gas from Texas Gas, as proposed, within one year from the date on which this order issues and upon the execution of a service agreement between Applicant and Texas Gas in accordance with the Commission's Regulations under the Natural Gas Act.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

WARRIOR RIVER ELECTRIC COOPERATIVE ASSOCIATION, PROJECT NO. 2102

ORDER WAIVING PENALTIES FOR DELINQUENCY IN PAYMENT OF ANNUAL CHARGES

(Issued March 12, 1965)

On March 6, 1961 and March 9, 1962, respectively, statements of the annual charges for the calendar years 1960 and 1961 under the license for Project No. 2102 were mailed to Warrior River Electric Cooperative Association, licensee for the project. It was noted on each statement that the charges should be paid "within 30 days of rendition of a bill therefor."

A check in the amount of $1,800, representing the total annual charges owing for 1960 and 1961, was remitted to us by letter dated December 16, 1964, in which request was made for waiver of penalties accruing by virtue of the delinquency in payment, pursuant to Section 11.31(e) of the Regulations under the Federal Power Act. In making the request, we are advised among other things, that the licensee has been reorganized and given new management and that when the 1962 license fee was paid the new management assumed that such payment brought such license fees up to date.

Our records show that the licensee has paid the annual charges for the calendar year 1962, together with the penalty thereon for delinquency in payment.

The Commission finds:

In the circumstances, it will not be inconsistent with the public interest to waive the penalties attaching by reason of the licensee's delay in payment of the annual charges for the calendar years 1960 and 1961.

The Commission orders:

The above-mentioned penalties, by reason of the delay of the licensee in the payment of annual charges under the license for Project No. 2102 for the calendar years 1960 and 1961, are hereby waived.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

ARKANSAS LOUISIANA GAS COMPANY, DOCKET NO. CP65-209

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND ACCEPTING RATE SCHEDULE FOR FILING

(Issued March 15, 1965)

On January 8, 1965, Arkansas Louisiana Gas Company (Applicant), Shreveport, Louisiana, filed in Docket No. CP65-209 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas, all as more fully set forth in the application on file with the Commission.

Applicant proposes to make an interruptible sale of up to 20,000 Mcf per day of natural gas to Mississippi River Transmission Corporation (Mississippi) between October 15 and April 15 each year. The rate for this gas is 26¢ per Mcf for all gas delivered.

Applicant proposes to deliver gas to Mississippi at existing interconnecting facilities of each company in Union Parish, Louisiana. Said facilities were previously used for delivery of similar volumes between the parties.

The application states that no new facilities are required in order to provide the proposed service.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 11, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Arkansas Louisiana Gas Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 26, 1943, in Docket No. G–253 (3 FPC 910).

(2) The proposed sale and delivery of natural gas by Applicant to Mississippi, as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed sale and delivery of natural gas is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to the Applicant in this proceeding, authorizing the sale and delivery of natural gas to Mississippi, as more fully described in the application and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(4) and (e) of Section 157.20 of such Regulations.

(C) Applicant's concurrent filing of its contract with Mississippi, designated Rate Schedule XFS–25 to its FPC Gas Tariff, Original Volume No. 3 is hereby accepted for filing to become effective as of the date of this order.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

CONSOLIDATED OIL & GAS, INC., DOCKET NO. RI61-350

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICES OF CHANGE, AND TERMINATING PROCEEDING

(Issued March 15, 1965)

On January 8, 1965, Consolidated Oil & Gas, Inc. (Consolidated) submitted an offer of settlement in the above-designated proceeding, involving the jurisdictional sales of natural gas under Consolidated's FPC Gas Rate Schedule Nos. 26, 27, 28, and 29 to Hugoton Plains Gas and Oil Company (Plains) from the Guymon-Hugoton Field, Seward County, Kansas (Kansas Area) and Texas County, Oklahoma (Oklahoma Panhandle Area). Plains gathers and processes the gas in its Tyrone Gasoline Plant and resells the residue gas to Northern Natural Gas Company (Northern).

The presently effective rate is 18.92¢ per Mcf at 14.65 psia under each of said rate schedules. These increased rates have been in effect subject to refund in Docket No. RI61-350 since February 14, 1961. Consolidated's rates are based on a revenue sharing arrangement with Plains whereby Consolidated is entitled as a contractual matter to receive a rate which is 1.1166¢ per Mcf (corrected for compressibility) less than Plains' resale rate to Northern. The rates in effect subject to refund were based on Plains' increased rate of 20.1626¢ per Mcf for the sale of gas to Northern which was suspended in Docket No. RI60-102. The proposed settlement rates are based on Plains' settlement rate of 15.75¢ which was approved by order issued October 8, 1963 in Docket No. RI60-102, 30 FPC 973.

In its offer of settlement, Consolidated proposes to reduce its increased rates effective February 14, 1961, to 14.6334¢ per Mcf at 14.65 psia, subject to any applicable contractual deduction for compression.[1] Refunds are not involved because Consolidated has not collected rates above the proposed settlement rates.

Inasmuch as the proposed settlement rates are directly related through a revenue sharing arrangement to the 15.75¢ per Mcf resale settlement rate of Plains, acceptance of Consolidated's proposed settlement is in the public interest. Our action here does not constitute either a change in our present policy of suspending all increased rates above 11¢ per Mcf in these areas for the sale of pipeline quality gas within the meaning of the Commission's Statement of General Policy No. 61-1, as amended, or a change in our general settlement policy, but is based solely on the special circumstances presented in this case, in which the Commission's recognition of the agreement made by the parties does not affect the price to the pipeline purchaser.

Our action should not be construed as constituting approval of any future rate increases, if any, that may be filed under the subject rate schedules, and is without prejudice to any findings or order of the Commission in any future rate proceedings, including area rate proceedings, involving Consolidated's rates and rate schedules.

The Commission finds:

The proposed settlement of the above-designated proceeding, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Consolidated on January 8, 1965, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

---

[1] It became necessary for Plains to compress the subject gas, and a compression charge of 1¢ per Mcf is in effect pursuant to the contract.

The Commission orders:

(A) The offer of settlement filed with the Commission by Consolidated on January 8, 1965, is hereby approved in accordance with the provisions of this order.

(B) Consolidated shall file within 30 days from the date of issuance of this order, notices of change in rate providing for the 14.6334¢ per Mcf at 14.65 psia rates specified in its offer of settlement. The notices of change shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Upon notification by the Secretary of the Commission that Consolidated has complied with the terms and conditions of the order, the rates and charges of 14.6334¢ per Mcf at 14.65 psia, specified in its offer of settlement, subject to any applicable contract deductions, shall be effective as of the issuance of this order, and the above-designated proceedings shall be deemed terminated.

(D) The acceptance by the Commission of Consolidated's offer of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Consolidated, including area rate or other similar proceedings.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

MONTANA-DAKOTA UTILITIES CO., DOCKET NO. CP65-218

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 15, 1965)

On January 18, 1965, Montana-Dakota Utilities Co. (Applicant) filed in Docket No. CP65-218 an application pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(b) of the Regulations under the Act, for a certificate of public convenience and necessity authorizing the construction during the calendar year 1965 and the operation of natural gas facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application in this proceeding.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

The total cost of the facilities covered by this application will not exceed a maximum of $1,350,000, with no single project to exceed a cost of $337,500, which costs are proposed to be financed from internally generated funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 11, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Montana-Dakota Utilities Co., a Delaware corporation having its principal place of business in Minneapolis, Minnesota, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 22, 1946, in Docket Nos. G-220 and G-402 (5 FPC 64).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with subparagraph (3) of Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1965 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $1,350,000, with no single project to exceed a cost of $337,500.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Montana-Dakota Utilities Co., to construct during the calendar year 1965, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with subparagraph (3) of Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1965, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $1,350,000, with no single project to exceed a cost of $337,500.

OPINION NO. 455

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP63-174

OPINION AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 15, 1965)*

Syllabus

1. It is unnecessary to consider whether pipeline's exhibits standing alone meet requirements of Section 157.14(a)11 of the Rules where [as here] evidentiary hearing has been held and Commission concludes such record is sufficient to support proposal. P. 547.
2. Testimony and accompanying market data establishes Natural's market estimates are reasonable and market exists for additional proposed service. P. 547.
3. In past Commission frequently authorized reasonable quantities of unallocated pipeline capacity. P. 547.
4. Impossibility of predicting with exactitude such factors as changing climate cycles, population movements and economic growth make it essential that a pipeline maintain a reserve of unallocated capacity reasonably enabling it to handle future unforeseen conditions. PP. 547, 548.
5. Unallocated capacity constitutes a reserve upon which pipeline's customers, subject to Commission authorization, may draw to satisfy unexpected needs. P. 548.
6. Total unallocated capacity of less than 1.2 percent of pipeline's total transmission capacity does not constitute an unreasonable reserve, considering vitality of its market areas. P. 548.
7. Natural's storage facilities are being operated at maximum safe capacity and its firm requirements cannot presently be satisfied from this source. P. 548.
8. Proposed expansion does not prejudice Coal Interests' competitive position in Chicago utility market—benefits to public will outweigh any such possibility. P. 548.
9. By virtue of issuance of certificate here, Coal's application for rehearing and reconsideration of prior letter-order granting temporary certificate must be denied. P. 549.
10. Commission *issues* certificate of public convenience and necessity under Section 7 of the Natural Gas Act.

Clarence H. Ross, Charles C. McDugald, Philip A. McKinsey, Fred P. Bosselman, Kenneth R. Myers and *Richard F. Babcock* for Natural Gas Pipeline Company of America; The Peoples Gas Light and Coke Company and North Shore Gas Company.

Justin A. Stanley and *Robert A. Helman* for Northern Illinois Gas Company.

Joseph T. Morrow for Northern Indiana Public Service Company.

John F. Gaston for Iowa Electric Light and Power Company.

---

*Initial decision appears on p. 550. Rehearing and reconsideration denied by order issued May 6, 1965, 33 FPC 979.

Edward J. Hartman for Iowa-Illinois Gas & Electric Company.

Barnabas F. Sears, Hamilton K. Beebe, Charles W. Stadell, Jerome J. McGrath, Robert E. Lee Hall and *Welly K. Hopkins* for Fuels Research Council, Inc.; National Coal Association; United Mine Workers of America and Mid-West Coal Producers Institute, Inc.

C. Louis Knight for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

BLACK, *Commissioner:*

This is a proceeding under Section 7 of the Natural Gas Act on an amended application by Natural Gas Pipeline Company of America (Natural) for authorization to construct and operate the necessary facilities to increase the daily capacity of its pipeline system by 115,500 Mcf. On the filing by the Coal Interests[1] of a petition to intervene, Natural, supported by its customers, the Illinois Commerce Commission and the City of Chicago requested and obtained temporary authorization to construct the facilities. Following hearings before the Presiding Examiner, the matter is now before us on exceptions filed by the staff and the Coal Interests to the Examiner's decision finding that the facilities should be permanently certificated.

The principal issue raised by exceptions is the validity of Natural's need for the additional gas requested. Underlying this is the question of the validity of Natural's market estimates and of its evidentiary presentation establishing its market requirements. Assuming Natural's need for the gas, an issue is also raised as to whether the facilities here involved are in excess of those needed to meet Natural's market requirements.

Finally, the Coal Interests contend that the proposed expansion is excessive, would have an adverse impact on the coal market and will promote artificial and illegal pricing rates in the gas market.

The initial decision by the Presiding Examiner would grant a permanent certificate to Natural. The Examiner found: that additional gas is needed for Natural to meet its firm market requirements; that Natural's storage facilities are being operated at maximum safe capacity and its firm requirements cannot be satisfied from this source; and, that the expansion involved in this proceeding does not prejudice Coal's position in the Chicago utility market.

Staff, in its exceptions opposing certification, contends that the requested expansion is excessive, challenges the reasonableness of Natural's existing excess pipeline capacity, the competency of the evidence relating to reserves, financing and market estimates, the validity of precedent agreements between Natural and its customers, and the economic feasibility of the expansion proposed in this docket. Staff argues that Natural's presentation is deficient with respect to market requirements, economic feasibility, and gas reserves; that its evidence relating to market requirements failed to comply with Commission regulations; that its application therefore fails to prove all of the elements entering into a determination of the public convenience and necessity; and that, therefore, its application should be denied. Staff concludes, however, that if a certificate is granted to Natural in this proceeding, it should be subject to the following conditions:

(1) That Natural exclude from its plant accounts and its rate base the pro-rata cost of all transmission pipeline capacity in excess of that needed for

---

[1] The National Coal Association, Fuels Research Council, Inc., Mid-West Coal Producers Institute, Inc., and United Mine Workers of America.

the maximum daily volumes of gas which the Commission has authorized Natural to sell on a firm basis, and

(2) That Natural shall submit a plan for permanent financing which is satisfactory to the Commission.

The Coal Interests, also protesting issuance of a permanent certificate, argue that the evidence does not support a finding that Natural's customers need more flow gas; that the Examiner gave inadequate consideration to storage availability to meet peak-season needs. The Coal Interests contend that Natural's expansion is merely a subterfuge designed to inflate its rate base; that increased amounts of valley gas will be dumped at prices below the price of coal and that the expansion will permit Natural's distributors to peg interruptible boiler fuel sales of gas at a price level which will be to the competitive disadvantage of the Coal Interests and harmful to the ultimate firm consumer. Finally, the Coal Interests argue that pegging the price of gas below the price of coal violates the Natural Gas Act and the policies underlying the Federal anti-trust laws.

Briefs opposing exceptions were filed by Natural and Northern Illinois Gas Company on December 14, 1964, urging adoption of the Examiner's decision.

Upon consideration of the entire record in this proceeding, the briefs of the parties, and the exceptions to the Examiner's decision, we conclude that the findings of fact and conclusions of law, as expressed by the Examiner, are fully supported by the evidence and, except as set forth below, we deem it unnecessary to further elaborate on his findings and conclusions.

Markets

Staff and the Coal Interest protest that the Examiner erred in concluding that Natural's Exhibit No. 9 constitutes adequate compliance with Section 157.14(a)11 of the Commission Regulations under the Natural Gas Act which define the evidentiary support required for market estimates. We feel it unnecessary to consider whether the Natural exhibits standing alone meet the requirements of our Rules. Here an evidentiary hearing has been held and, on review of the proffered exhibit plus the amplifying testimony of the market witnesses of Natural's four largest customers, we conclude that the evidence of record is sufficient to support its proposal. We wish to make clear that we are not deciding the question whether similar evidence would support future applications to provide for initial service or a major system expansion. The testimony and accompanying market data of record here established that Natural's market estimates are reasonable and markets exist which need and will purchase the additional service proposed.

Unallocated Capacity

Staff argues that Natural's unallocated pipeline capacity as of November 1963, when added to the unallocated capacity requested in the present docket is excessive and imposes an unnecessary cost on the gas consumer. This Commission has frequently authorized reasonable quantities of unallocated capacity for other pipelines, as well as Natural.[2] New load attachments cannot be made to coincide with the timing of expansion applications. The impossibility of predicting with exactitude such factors as changing climate cycles, population movements and economic growth make it essential that a pipeline maintain a reserve of unallocated capacity which will reasonably enable it to handle future conditions which could not have been foreseen. This unallocated capacity constitutes a reserve upon which Natural's customers, subject to Commission authorization, may draw to satisfy such unexpected needs. The total unallocated capacity, in our opinion, is less than 1.2% of Natural's total transmission capacity. Considering the vitality of Natural's market areas, we do not find such to constitute an unreasonable reserve.

---

[2] In *Midwestern Gas Transmission Company*, 22 FPC 775 (1959), the Commission certificated facilities with 22,790 Mcf unallocated capacity; in *Transcontinental Gas Pipe Line Corp.*, 22 FPC 836 (1959), the Commission authorized construction resulting in 17,000 Mcf of unallocated capacity. See also *Transcontinental Gas Pipe Line Corp.*, 27 FPC 858 (1962), authorizing 8,603 Mcf of unallocated capacity, Opinion No. 424, *Southern Natural Gas Company*, 31 FPC 789 (April 6, 1964), and *Texas Eastern Transmission Corp.*, 28 FPC 1035 (1962).

Storage

The Coal Interests allege that Natural's firm requirements can, if necessary, be met from existing storage facilities. We agree with the Examiner and Staff that based on evidence of record, Natural's storage facilities are being operated at maximum safe capacity and that its firm requirements cannot presently be satisfied from this source.

Impact on Coal

The Coal Interests argue that the coal industry will be seriously injured by the increased sale of valley gas for boiler fuel if the instant pipeline expansion is authorized. They aver that while Coal's contract with Commonwealth Edison Company suggest a greater coal usage, they do not preclude the use of greater volumes of gas and lesser use of coal. Thus, they say, contrary to the Examiner's finding, there is no assurance that coal sales in the utility market will be increased or that the additional gas made possible through the excess capacity built into Natural's expansion will not be used under the boilers of the Edison plants. These contentions must be rejected. There are no sales for boiler fuel or any other purpose by Natural; Natural's commodity rate is 20.6¢ per Mcf.[3] The record shows that Commonwealth Edison will reduce its total gas consumption while increasing its consumption of coal even if Natural makes available, at this rate, additional gas to Commonwealth's supplier, Peoples. The facts thus indicate that the Coal Interests have over-estimated the extent of possible harm to their interests from the project.

On review of the evidence we agree with the Examiner for the reasons set forth in his opinion, that the proposed expansion does not substantially prejudice the Coal Interests' competitive position in the Chicago utility market. In our judgment, the benefits to the public will outweigh any possible harm to the Coal Interests. However, we shall require Natural to obtain reports from its distributor customers for submission to this Commission regarding the total volumes of gas which they sell each month for boiler fuel useage.

Other Matters

Peoples Gas Light and Coke Company (Peoples) takes no exception to the reasoning or conclusions of the Examiner, but does except to the reference made to its Mahomet storage field as an "operating project."[4] Peoples argues that although experimentation is being performed at Mahomet the reservoir has not yet been shown to be acceptable for underground storage. We find this exception to be well taken.

---

[3] The Coal Interests argue at considerable length that the pegging of Natural's commodity rate at 20.6¢ was not derived by cost concepts (because the rate was based on fully distributed cost) but was fixed at the price of competing fuels—*i.e.*, coal. This, it is contended, violates the provisions of Sections 1, 4 and 5 of the Natural Gas Act and the policies of the Federal anti-trust laws. This contention obviously is an impermissible collateral attack on our Opinion No. 367 (28 FPC 731; rehearing denied 28 FPC 1033) in which, over Coal Interests' objections, after a full hearing we expressly fixed the 20.6¢ commodity charge for Natural. The validity of this rate is not affected by the fact that as a result of our action here more gas will be available.

The Coal Interests argue that a temporary certificate was granted Natural by letter-order of the Commission dated August 16, 1963, some 21 days after the Coal Interests filed their opposing intervention, and over the objections entered by them August 2, 1963. An application for rehearing was filed and by order issued October 15, 1963, the Commission granted "Rehearing for Purpose of Further Consideration," but denied the Coal Interests' request for a stay of the letter-order. The application for rehearing and reconsideration of the August 16, 1963, letter-order granting a temporary certificate to Natural is thus still pending before the Commission.

By virtue of our action herein granting a certificate of public convenience and necessity to Natural, Coal's application for rehearing and reconsideration must be denied.

All exceptions, arguments and requests not discussed or granted herein have been considered but are without substantial support in the record or a reasonable basis in law or are immaterial to the proper disposition of this proceeding and should be denied. The Presiding Examiner's initial decision issued herein on October 22, 1964, should be modified as herein set forth and as so modified should, to the extent consistent with this Opinion and Order, be adopted by the Commission as of the date of issuance of the Opinion and Order, to constitute herewith our decision in this proceeding.

The Commission further finds:

(1) The Applicant, a Delaware corporation having its principal place of business at Chicago, Illinois, is engaged in the transportation of natural gas in interstate commerce and the sale in interstate commerce of natural gas for resale for ultimate public consumption and is a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The proposed facilities of the Applicant as more fully set forth in its Application and the evidence of record in this proceeding are to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by the Applicant are subject to the requirements of Section 7(c) of the Natural Gas Act.

(3) The Applicant is able and willing to do the acts and perform the services proposed, and to conform to the provisions of the Natural Gas Act as amended and the rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with the conditions herein prescribed and all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

---

[4] Examiner's Decision, p. 557.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) Natural shall obtain from its distributor customers and submit to the Commission, annually, the monthly volumes of gas delivered to their respective customers for boiler fuel purposes. Such report shall be made not later than March 1 in each year, commencing in the year 1966.

(D) The initial decision of the Presiding Examiner issued October 22, 1964, is, to the extent consistent with this Opinion, hereby adopted by the Commission as of the date of issuance of this Opinion, to constitute with this Opinion the Commission's decision in this proceeding.

(E) The application for rehearing and reconsideration of our letter-order dated August 16, 1963, filed by the Coal Interests, is hereby denied.

(F) The exceptions filed to the Presiding Examiner's decision are denied.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY UNDER THE NATURAL GAS ACT

(Issued October 22, 1964)

WILLIAMS, *Presiding Examiner:* This proceeding is pursuant to an application by the Natural Gas Pipeline Company of America, hereinafter referred to as the Applicant, for a certificate of public convenience and necessity under Sections 7 (c) and (e) of the Natural Gas Act, as amended.

On December 18, 1962, the Applicant requested authority to increase the daily design capacity of its pipeline system by 40,000 Mcf and on April 11, 1963, it submitted a revised application to further increase the daily system capacity to 110,000 Mcf. The facilities the Applicant intends to construct and operate include approximately 36.24 miles of 36-inch loop pipeline in Meade County, Kansas, Montgomery and Adams Counties, Iowa and Grundy County, Illinois; approximately 25.92 miles of 24-inch loop pipeline in Henry, Bureau and Whiteside Counties, Illinois; 2,600 BHP additional compression at existing Compressor Station No. 103 in Ford County, Kansas and a new compressor station with 2,600 BHP compression in Woodward County, Oklahoma.

On July 26, 1963, the National Coal Association, Fuels Research Council, Inc., Mid-West Coal Producers Institute, Inc., and United Mine Workers of America, hereinafter referred to collectively as Coal Interests, filed a petition to intervene alleging, *inter alia*, that the proposed expansion of facilities and the resulting volumes of gas to be brought into the Chicago area would have a detrimental effect upon the sale of coal by petitioners and that the existing storage facilities of the Applicant, if properly employed, are sufficient to meet the peak season demands of its firm customers.

The Applicant, on July 29, 1963, requested the issuance of a temporary certificate of public convenience and necessity for the proposed expansion citing emergency conditions and alleging that the facilities in question are necessary to assure the maintenance of adequate service to its distributors during the 1963–64 heating season.

The Commission by letter dated August 16, 1963, issued a temporary certificate to the Applicants and on September 16, 1963, the Coal Interests filed an application requesting the rehearing, reconsideration, and rescission of such action.

The petition to intervene by the Coal Interests was subsequently granted by the Commission, but without disturbing its order of August 16, or granting a stay of the scheduled proceedings. The Commission also refused the Coal Interests' request to consolidate the instant matter with Docket No. RP63-6, a pending rate case.

Hearings commenced on October 21, 1963 and were concluded on May 14, 1964. On January 6, 1964, the Applicant notified the Commission that the construction of all facilities authorized by the temporary certificate was complete and that the increased service authorized by the order of August 16, 1963 became available to its customers on December 1, 1963.

The record consists of 4,178 pages of transcript, 151 exhibits and 7 items by reference to the files of the Commission. The Applicant's initial brief was filed on June 17; the Coal Interests' and Staff Counsel's briefs on July 24 and 22, respectively, and the Applicant's reply brief on August 10, 1964.

The Applicant, a wholly-owned subsidiary of Peoples Gas Light and Coke Company (Peoples) and its principal distributor customer, operates parallel transmission lines from the West Panhandle Field in Texas through the States of Oklahoma, Kansas, Nebraska and Iowa to the Chicago area with a 20-inch sales lateral pipeline extending from the main lines near Genesco, Illinois to the Illinois-Wisconsin state line, and a supply pipeline extending southeasterly from the Panhandle Field through Oklahoma into Wise County, Texas. It also operates a partially looped pipeline extending from the South Gulf Coast Area in Texas through the States of Arkansas and Missouri to points near Joliet and Volo, Illinois.

The Applicant sells natural gas for resale to municipalities and utility companies for local distribution in Kansas, Nebraska, Iowa, Wisconsin, Illinois, Indiana and Missouri. It also owns and operates underground gas storage facilities near Herscher and a smaller project in the Cooks Mills Field, both in the State of Illinois.

The Applicant has been serving its existing markets for about thirty years and it alleges that the present request is part of a regular program of pipeline and storage expansion to meet the firm requirements of gas consumers in its established market area.

The Issues

The principal issue in this proceeding is whether or not there is a *bona fide* need by the Applicant for the additional gas requested. Assuming that such gas is necessary to meet peak season demands, the secondary issue is whether or not such requirements can be met from the Applicant's existing pipeline capability (prior to the construction of the projects involved in this proceeding) and by increased use of its storage facilities.

Staff Counsel, who opposes the issuance of a certificate in the premises, has, in addition to the above questions, raised a multitude of subordinate issues which challenge, *inter alia*, the reasonableness of the Applicant's excess pipeline capacity, the competency of the evidence relating to reserves, financing and market estimates, the validity of the precedent agreements between the Applicant and its customers and the economic feasibility of the expansion.

The Coal Interests, who likewise contest the issuance of a certificate to the Applicant, allege, in addition to the key issues previously stated, that the expansion is merely a subterfuge designed to inflate the Applicant's rate base; that increased amounts of valley gas will be dumped at prices below the price of coal and that the expansion will permit the Applicant's distributors to peg interruptible boiler fuel sales of gas at a price level which will be to the competitive disadvantage of the Coal Interests and harmful to the ultimate firm consumer.

Proposed Markets

The record indicates that the Applicant has agreed to supply sixteen of its customers with the following amounts of additional flow gas per day:

	Mcf at 1,000 Btu per cubic foot and 14.65 psia
The Peoples Gas Light and Coke Company	35,000
Northern Indiana Public Service Company	25,000
Northern Illinois Gas Company	15,000
North Shore Gas Company	14,000
Central Illinois Electric and Gas Co	3,000
Wisconsin Southern Gas Company	2,500
Iowa Electric Light & Power Company	1,000
Missouri Utilities Company	671
City of Nebraska City, Nebraska	500
Iowa Southern Utilities Company	466
Citizens Gas Company	400
Associated Natural Gas Company	345
City of Salem, Illinois	340
Iowa Power and Light Company	300
United Cities Gas Company	200
Ruth Fuel Company	174
	98,896

The four largest customers, accounting for 89,000 Mcf of the gas involved, each presented a market witness who testified at length concerning the demand for gas in his respective area.

Mr. W. S. Crowley, Vice-President and Comptroller of Northern Illinois Gas Company (Northern) testified that the additional supply requested by his company is primarily for space heating and that during the summer the gas not used to meet customer demands will be injected into storage. He also stated that some small quantities of the gas will be sold to interruptible customers during the summer months.

Mr. Jack W. Stine, Administrative Assistant in the Executive Offices of Northern Indiana Public Service Company (NIPSCO), testified that his duties relate to the supervision of gas supply, marketing and requirements and that NIPSCO would attach an estimated 23,200 space heating customers during 1963. Mr. Stine admitted upon cross-examination that approximately 18,000 Mcf per day of the additional gas requested would be sold to firm industrial processors.

Mr. Donald H. Keller, Assistant to the President, North Shore Gas Company (North Shore), testified that he is familiar with the market conditions of the company and, in his opinion, based upon estimates furnished to him by the sales department, North Shore would attach some 4,300 space heating customers in 1963 and that the peak day requirement would rise by 9,900,000 cubic feet. He also estimated that 256 commercial space heating customers would be added to the system in 1963 with an additional peak day requirement of 2,069,000 cubic feet.

Mr. Joseph P. Thomas, Assistant to the Comptroller, Peoples, and former Manager of the Rates and Markets Department, testified that he is directly responsible for studies relating gas supply to Peoples' market requirements. Mr. Thomas stated that while no additional gas was requested from the Applicant in the original application, the send out experience gained by the previous winter's extreme temperature periods; the unavailability of other sources of gas supply and the first year of unrestricted space heating attachments are the factors which prompted the request for additional gas in the amended application.

Mr. Carl Altenbern, the Applicant's Sales Manager, testified with respect to the balance of the gas requested which will be delivered to the twelve so-called downline customers. Only three of these customers desire more than 1,000 Mcf and eight have asked for 500 Mcf or less. Many of the individual customer requirements submitted to the Applicant in response to a letter of solicitation, were adjusted by Mr. Altenbern pursuant to subsequent conversations with representatives of the customer.

Sufficiency of the Market Estimates

Staff Counsel and the Coal Interests claim that the Applicant has not complied with the regulations issued pursuant to the Natural Gas Act in a number of material respects in presenting existing and prospective natural gas requirements of its customer distributors.

Staff Counsel's brief, page 3, states in effect, that the Applicant has failed specifically to comply with Sections 157.5 and 157.14(a) (11) (iv), (v) and (vii) of the Regulations which require that supporting historical data, market surveys and conformed copies of contracts for sale or transportation of natural gas be tendered for filing with its application.

Considering first whether or not the requirements of Sections (11) (iv) and (vii), *supra*, which are concerned with the gas requirements of the pipeline and its customers, explanation and derivation of basic factors used in estimating future requirements and copies of market surveys, have been satisfied in the Applicant's presentation, the Examiner has no difficulty in reaching an affirmative conclusion. Even a superficial inspection of Exhibit 9 will reveal compliance with the statistical requirements of Section (11) (iv), and Section 3 of such exhibit contains actual historical data; *i.e.*, the past three years' operating experience and detailed projections for three years in the future.

Insofar as market surveys are concerned, the Examiner is satisfied that Exhibit 9, as a whole, is a "market survey" within the meaning of Section (11) (vii), particularly in view of its extensive amplification by the testimony of the individual market witnesses.

The data shows that in the year 1962 the distributor customers of the Applicant furnished the gas requirements of more than 3,600,000 consumers and the number of such consumers is expected to increase by approximately 180,000 a year in the foreseeable future. It is the actual requirements of these end users, regardless of their classifications as residential, commercial or industrial, that the distributors must forecast as accurately as possible and be ready to supply. The task of estimating the needs of the multitude of consumers is a formidable one since a distributor's utility status prohibits a choice of customers or the number of gas consuming appliances such customers may elect to purchase.[1]

---

[1] The record indicates that wartime restrictions on new gas service or appliance connections have been removed.

It is obvious that a distributor can exercise little control over the use or lack of use of firm service, the buying decisions of the consumer and, least of all, the vicissitudes of the weather; all of which factors are important in estimating the gas requirements of its customers.

Since a distributor cannot precisely determine the future requirements of its customers, it is necessary to make a reasonable projection or estimate of these demands. Such a guide is necessary for management not only in the matter of gas supply from the various pipeline sources, but for a number of other cogent reasons, such as operating expenses, capital expenditures, employment, financing, all of which are essential to the proper functioning of a utility business.

The Examiner has reviewed the market data presentation of the Applicant and it is his finding that the Applicant and the various distributors involved have furnished the requisite historical data contemplated by the regulations.

The historical data in the instant proceeding is similar in form to the material submitted in many previous certificate cases by the Applicant and, in fact, compares with the presentation made in Docket No. CP64–162, which application was filed subsequent to the instant case and approved by the Commission on July 27, 1964, 32 FPC 370. While past certifications are not immutable proof of the adequacy of the Applicant's presentation in the case at bar, the similarity in form and content suggests to the Examiner that the Commission will consider the same to be an "adequate presentation in intelligible form" within the intent and meaning of Section 157.5 of the Regulations.

Staff Counsel cites Opinion No. 409, *East Tennessee Natural Gas Company*, Docket No. CP63–212 (November 5, 1963), 30 FPC 1197, as authority in support of his demand that the application in the instant proceeding be dismissed for the lack of "supporting historical data" required by Section 157.14(a)(11)(iv) of the Regulations pursuant to the Natural Gas Act.

The Examiner regards the circumstances upon which Opinion No. 409 was predicated—an abbreviated proceeding where the application failed to state the nature and extent of the facilities for which a certificate was sought—as substantially different from those prevailing here and, consequently, the citation cannot be considered pertinent.

Staff Counsel also alleges that the Applicant has failed to file or offer in evidence a copy of each contract, letter of intent or other agreement for sale or transportation of natural gas proposed by the application in conformity with the requirements of Section 157.14(a)(11)(v) of the Regulations promulgated pursuant to the Natural Gas Act.

This assertion appears to be bottomed upon his mistaken belief that the copies of the sixteen precedent agreements embraced in Section 2 of Exhibit 9 are not valid instruments within the meaning of the above-mentioned Regulations because (a) they contain certain conditions subsequent relating to the Applicant's ability to deliver the specified amounts of additional gas; (b) the copies of such agreements are hearsay and are not admissible under any established exception to the hearsay rule; (c) the copies are not the best evidence and (d) no authenticating witnesses were called to testify as to the validity of the execution of each agreement. Notwithstanding the aforesaid alleged deficiencies, Staff Counsel is concerned about the present legal effect of the agreements since a temporary certificate has been granted and the expanded service has, in fact, commenced.

Since the precedent agreements are not required by the Regulations[2] and the Applicant has demonstrated through the testimony of market witnesses and copies of service agreements that customers are ready to take the gas under the terms set forth in the application, the objections raised by Staff Counsel are moot.

Despite the academic posture of the question, the Examiner has no difficulty in reaching the conclusion that the precedent agreements are valid contracts, letters of intent or other agreements for the sale of natural gas. A condition subsequent is not an unusual contractual provision. In the instant case, the permanent certification of the proposed facilities requires the execution of a service agreement by the respective parties for the additional gas involved as contained in the Applicant's FPC Gas Tariff. The intermediate contractual effect of the temporary certificate upon the precedent agreements, and the fact that service has commenced pursuant thereto, are extraneous to this proceeding, but since Staff Counsel has raised the point it is, perhaps, also appropriate to observe that interim Service Agreements, pending the completion of this proceeding, have been accepted for filing by the Commission with respect to all sixteen customers of the Applicant as of December 1, 1963.

The Examiner is satisfied that the copies of the precedent agreements contained in Section 2 of Exhibit 9 are probative and reliable evidence[3] that such agreements have, in fact, been entered into between the various parties. Each of the four principal customers of the Applicant supplied a responsible market witness who testified at length as to the amount of gas requested in the respective precedent agreements. The execution of such contracts is further corroborated by the fact that the interim Service Agreements previously mentioned have been filed in each case for the expanded service which commenced on December 1, 1963.

Staff Counsel has posed a further question with respect to this certification: namely, whether or not the Applicant should be permitted to triple its existing excess transmission pipeline capacity.

Taking a negative position, Staff Counsel claims that the 115,500 Mcf expansion, in view of past experience, would enable the Applicant to serve the growing contract demands of its customers for more than 14 years. This assumption is based upon the observation that in the 12 months' period immediately preceding the filing of the amended application, the Applicant's unused pipeline capacity was put into service at the rate of approximately 2000 Mcf per month; for the period from December 18, 1962 to April 11, 1963, 1250 Mcf per month; for the period from April 11, 1963 to November 8, 1963, 300 Mcf per month, while for the period from December 1962 to November 8, 1963 the rate was about 7800 Mcf per day on an annual basis.

Staff Counsel's argument fails to distinguish between allocated and unallocated capacity. In the case at bar, the Applicant has requested authority to construct 115,500 Mcf per day of additional capacity of which only 16,604 Mcf per day is unallocated, the balance of capacity having been spoken for by sixteen customers who request an additional supply of gas.

---

[2] Section 157.14(a)(11)(v) provides that there shall be attached to each application: Conformed copy of each contract, letter of intent or other agreement for sale or transportation of natural gas proposed by the application. Indicate the rate to be charged. If no agreements have been made, indicate the basis for assuming that contracts will be consummated and that service will be rendered under the terms contemplated in the application.

[3] The complex and technical nature of the administrative hearing often precludes adherence to the exclusionary procedures common to the jury trial. The reliability of evidence as gauged by surrounding circumstances is more often a desirable touchstone of admissibility than personal knowledge.

The following table, extracted from Exhibit 9, Schedule 3, lists the peak day, flow gas requirements of the Applicant's customers here seeking an increased allotment of firm deliveries, as actually experienced for the years 1960, 1961 and 1962 and as estimated for the year 1963.

Flow gas only—Peak day requirements (Mcf at 1,000 Btu)

Customer	1960	1961	1962	1963
Associated Natural Gas Co	1,830	2,163	2,710	
Central Illinois E & G Co	37,518	53,018	57,141	
Citizens Gas Co	1,086	1,086	1,806	
Iowa El. Lt. & Pwr. Co	22,576	26,902	32,752	
Iowa Pwr. and Lt. Co	17,377	19,193	18,138	
Iowa Southern Util. Co	4,658	7,011	7,542	
Missouri Utilities Co		608	922	
Nebraska City, City of	5,571	4,982	4,381	
North Shore Gas Co	46,064	52,777	67,195	
Northern Illinois Gas Co	495,629	535,249	533,342	
Northern Indiana P. S. Co	126,344	143,736	161,007	
Peoples Gas Lt. & Coke Co	536,243	545,564	605,802	
Ruth Fuel Co	658	700	767	
Salem, Illinois, City of	1,282	1,235	3,115	
United Cities Gas Co	1,699	2,500	3,022	
Wisconsin Southern Gas Co	10,032	12,940	12,781	
Total	1,308,567	1,409,664	1,512,423	
Increase over previous year		101,097	102,759	[4] 115,500

[4] Applied for in this application, including 16,604 Mcf of unallocated capacity.

As previously pointed out, Exhibit 41 clearly demonstrates the rate of growth on the Applicant's system from 1950 through 1963. Exhibits 23, 34 and 38 show the increasing requirements for three of the principal customers, Peoples, NIPSCO and North Shore, respectively, from 1952 through 1962. The combined data for the three distributors alone show an average annual increase in flow gas requirements of 73,500 Mcf per day during the ten-year period and an increase in storage gas requirements on an average annual basis of 40,400 Mcf per day.

With respect to the balance of 16,604 Mcf unallocated capacity, *supra*, that is alleged to be a reserve upon which the Applicant may draw subject to Commission authorization to supply unforeseeable demands. Witness Altenbern testified that such a supply is necessary to serve new and old customers between the times that expansion applications are filed. He also stated that if such a reserve was not readily available, the delays in obtaining authorized service could cause a substantial loss of business to the distributors and their customers.

Staff Counsel takes the position that such unallocated gas when added to the amount which existed in the pipeline as of November 1963 (7,609 Mcf) creates an unreasonable total of excess capacity. By dividing the estimated cost of the additional facilities in the proposed expansion by the amount of gas requested, Staff Counsel argues that the excess capacity will cost the consumer $69.93 per Mcf and $1,693,000 in the aggregate.

Since the 7,609 Mcf of unallocated gas which existed as of November 1963 has been in part permanently certificated, by the allocation of 2500 Mcf per day in Docket No. CP64–136, the balance of 5109 Mcf excess capacity plus the 16,604 Mcf per day here requested (a total of 21,713 Mcf per day)—less than 1.2 percent of the Applicant's total transmission capacity—does not appear to be unreasonable. In fact, two previous certifications (CP62–121 and CP62–167) have approved unallocated capacities of nearly 2 percent of the Applicant's total transmission capacity. Also, the costs of the unallocated capacity to the consumer as projected by Staff Counsel are entirely speculative since the expansion is not reflected in the currently effective rate schedules of the company and no increased charges will accrue to any customer until such time as a new rate filing becomes effective.

The Examiner finds from the evidence of record, including all exhibits relating to market requirements, data and the supporting testimony of the witnesses of the Applicant and the companies seeking an additional supply of gas, that the presentation of the Applicant is adequate and further, that an additional amount of gas is necessary for the Applicant to meet its firm requirements.

Storage

The Coal Interests have assumed the altruistic burden of attempting to demonstrate that the proposed expansion is not in the public interest. In their opinion, the alleged firm requirements of the Applicant can, if necessary, be met from existing storage facilities. This alternative, it is argued, will save the ultimate consumers the unnecessary cost of the pipeline expansion which. the Coal Interests believe will be promptly reflected in an inflated rate base, rate of return and revenue.

It is an accepted fact that valley gas is a concomitant of pipeline expansion, and unless it is injected into storage to meet peak demands, the gas usually finds its way to the interruptible market and in competition with coal. The Coal Interests, therefore, will benefit substantially from the storage alternative which they urge in the premises.

The Applicant operates a large aquifer-type storage project known as Herscher in Kankakee County, and a smaller hydrocarbon type reservoir known as Cooks Mills in Coles County, Illinois. It also has under development aquifer reservoirs at Cairo and Keota in southeast Iowa. Northern Illinois operates a large aquifer-type storage facility at Troy Grove in LaSalle County and other aquifer facilities are under development at Ancona in Livingston and LaSalle Counties, Garfield in LaSalle County and Crescent City in Iroquois County, Illinois. Peoples operates an aquifer storage project at Mahomet, 90 miles south of Chicago in Champaign County, Illinois and NIPSCO has aquifer reservoirs at Royal Center in Cass County and Lake of the Woods, Marshall County, Indiana.

Dr. J. M. Wanenmacher, a consulting petroleum engineer of many years' experience, testified in behalf of the Coal Interests stating, in substance, that an extensive investigation of the underground gas storage facilities which are presently available or are expected to be available to the Applicant and its customers, has been made under his direction and control; that it is his opinion that such facilities are not being operated at optimum capability and that the cost of maximum development and operation of such storage projects would be substantially less than the cost of meeting peak demands in the Chicago area by pipeline expansion.

Dr. Wanenmacher's conclusions were rebutted by Dr. Donald L. Katz, a professor of chemical engineering at the University of Michigan, and one of the principal consultants to the Applicant, Peoples and Northern Illinois on underground storage.

Dr. Wanenmacher stated, as a basic premise of his opinion, that the Applicant's storage facilities are not being operated to their full capacity, because "gas can be injected into a reservoir as rapidly as it can be withdrawn."

Dr. Katz, however, states that the proposition is correct only with respect to hydrocarbon reservoirs and not aquifers. Citing Herscher-Galesville as an example, Dr. Katz pointed out that while withdrawals of 750,000 Mcf of gas have been made on a single day, the maximum injection for a single day is 208,000 and the maximum daily summer rate of injection is less than 40,000 Mcf, the reason being that in an aquifer-type reservoir, except when pressure is low following a heavy withdrawal, the gas being injected must push back and compress the water which permeates the structure.

Dr. Katz further related that the high injection pressures recommended by Dr. Wanenmacher would result in extensive leakage in the Herscher-Galesville reservoir.

Both witnesses are well qualified experts in their profession, but it was developed in the course of cross-examination that Dr. Wanenmacher has had relatively little experience with the aquifer-type storage reservoir, the kind with which this case is primarily concerned. On the other hand, the evidence shows that Dr. Katz has had considerable operating experience with the particular reservoirs under consideration and, consequently, the Examiner is inclined to attribute more weight to his testimony than that of Dr. Wanenmacher.

Staff Counsel, while not offering any testimony on the matter, likewise concludes that the Applicant is presently using its storage facilities in a prudent manner and, by reference to the files of the Commission, demonstrated in his brief that the Applicant has steadily expanded its storage capabilities since August 1955 when the first withdrawals from Herscher-Galesville were made.

It is the finding of the Examiner that the Applicant's present storage facilities are being operated at maximum safe capacity and that its firm requirements cannot be satisfied from such source.

Financing

Mr. Wayne Simpson, Vice President in charge of Finance, testified that the estimated cost of the Applicant's proposed expansion is $8,077,000, and that short term loans from banks and Peoples have been received at 4.5 percent interest to finance the construction of such facilities upon an interim basis. He also stated that a first mortgage bond issue in the amount of $25,000,000 will be subsequently offered to the public as a means of permanently financing the instant construction as well as facilities embraced in other certificate applications.

Staff Counsel asserts, however, that since the facilities involved in this proceeding have been completed and are in service, a specific plan for permanent financing is required, and if a certificate is issued herein, it should be conditioned upon the Applicant's submitting a satisfactory permanent financing plan to the Commission.

The Coal Interests do not question the ability of the Applicant to finance the subject facilities either upon a short term or permanent basis.

The Examiner is satisfied that the short term financing arrangements made by the Applicant with its parent company and the four Chicago banks listed by Witness Simpson, are sufficient to carry the expansion program contemplated by this proceeding until such time as the Applicant deems appropriate to market securities for a permanent financing plan. Since the opportune time for a bond issue is a matter of judgment resting with the Applicant, no useful purpose is served by imposing a condition which may have the effect of impairing its ability to issue securities at what it may consider to be a propitious juncture.[5]

Gas Reserves

Staff Counsel, while admitting that the Applicant has an active gas procurement program, takes the position that the application is deficient because no evidence was presented relative to past and estimated future peak day total gas requirements including company use and unaccounted for gas; the contract demands of its customers; the estimated peak day total gas deliveries in future years and the Applicant's ability to sustain maximum day deliveries.

---

[5] *The Wall Street Journal* of August 26, 1964, announced an offering of $25 million 4½ percent first mortgage bonds by the Applicant for the purpose of retiring short term obligations and financing the 1964 expansion projects.

The record, however, contains ample evidence both historical and prospective to establish a *prima facie* showing that the Applicant has an adequate gas supply to support the instant expansion. Exhibits 5 and 6 and the testimony offered by the witnesses in connection therewith stand uncontroverted. In the absence of any affirmative evidence to the contrary, Staff Counsel's contention that the Applicant's supply of gas may be inadequate to meet its obligations, is rejected.

Economic Feasibility

Applicant's Exhibits 11 and 12 and the testimony in support thereof conclusively show that the incremental revenues to be received from the added service supplied through the facilities proposed in this expansion are substantially greater than the incremental cost of service assignable to such facilities. Exhibit 12 shows an incremental rate of return in excess of 27 percent in each of the first three years of operation so that there can be no burden placed on any customer of Natural since over-all system unit costs would be reduced.

Coal Intervenors do not doubt that the revenues to be received under this expansion will return Natural's ". . . cost and a handsome return." Staff Counsel questions economic feasibility solely on the basis that Applicant's market estimates are not supported. In view of the Examiner's finding *supra* that there is an adequate market showing of the need for additional gas, it is found that the project is economically feasible.

Impact Upon Coal

The Coal Interests, in addition to their concern for the welfare of the ultimate non-industrial gas consumers, allege that the coal industry will be seriously injured by the increased sale of valley gas for boiler fuel if the instant pipeline expansion is authorized.

Considerable testimony and a number of exhibits were put into evidence by the Coal Interests purporting to demonstrate the validity of such adverse expectations.

There is no doubt that the coal processors have suffered a substantial loss of business since World II through the loss of the home heating market and the dieselization of the railroads. On the other hand, there has been a steady increase in the consumption of coal by the electric utility industry both nationwide and in the State of Illinois.[6] Technology, for good or evil, has likewise had an impact upon coal mining and mechanization has substantially reduced mine personnel and the number of operating mines. This is a stark fact of economic life and unquestionably it has had serious repercussions throughout the bituminous coal industry.

The record in this case does not, in the opinion of the Examiner, support the Coal Interests' theory of a malign conspiracy upon the part of the Commission and the Applicant to give an unfair advantage to the pipeline by sanction of the existing rate structure.

While the sales of interruptible gas in this case are all subject to the approval of either the Illinois or Indiana State Commissions, the Federal Power Commission does recognize that industrial sales that return something more than incremental costs are a necessary and beneficial adjunct to both the pipeline and its ultimate firm consumers. In Opinion No. 441, ***Michigan Wisconsin Pipe Line Company,*** Docket No. CP64–109, the Commission certificated a direct sale of some six million Mcf per year for boiler fuel, finding that, although opposed to the use of gas for the generation of electric power, it was in the public interest to approve a sale which would result in substantial rate reductions to the utility's customers and dispose of gas which might not otherwise be sold at all. This is not to say, however, that the Commission generally sanctions the use of a premium fuel for the steam generation of electricity as it has historically dealt with such certification on a case-by-case basis.[7]

---

[6] The Coal Interests state at page 28 of their brief that "The present and future health of the midwestern bituminous coal industry lies in the electric utility market."

It is the Examiner's finding that the expansion involved in this proceeding does not prejudice coal's competitive position in the Chicago utility market. On the contrary, the contracts between the coal producers and Commonwealth Edison indicate a progressive improvement in the market share of bituminous coal as revealed by the following table:

COMMONWEALTH EDISON COMPANIES

Fuel consumption in equivalent tons of coal

Year	Coal	Gas	Total	Percent gas
1954	8, 508, 615	2, 028, 900	10, 537, 515	19. 3
1955	9, 972, 016	1, 577, 260	11, 549, 276	13. 7
1956	9, 950, 688	1, 682, 390	11, 633, 078	14. 5
1957	10, 032, 407	1, 697, 600	11, 730, 007	14. 5
1958	9, 206, 950	1, 721, 075	10, 928, 025	15. 8
1959	8, 974, 631	2, 304, 110	11, 278, 741	20. 4
1960	10, 126, 045	1, 447, 454	11, 573, 499	12. 5
1961	10, 828, 743	1, 222, 000	12, 050, 743	10. 1
1962	10, 879, 958	1, 765, 897	12, 645, 855	14. 0
1963	11, 697, 416	2, 022, 163	13, 719, 579	14. 7
1964	13, 099, 000	1, 592, 000	14, 691, 000	10. 8
1965	14, 169, 000	1, 169, 000	15, 338, 000	7. 6
1966	15, 825, 000	871, 000	16, 696, 000	5. 2

Data for the years 1954 to 1962, inclusive, taken from Exhibit 51, Schedule 2.
Data for the year 1963 calculated from Commonwealth's FPC Forms #1.
Data for the years 1964 to 1966, inclusive, as shown in Exhibit 105.

From 1954 to 1963, inclusive, the consumption of gas in Commonwealth's electric generating stations never exceeded the equivalent of 2,304,110 tons (1959). In the same period (See: Exhibit 41) Natural's flow gas capacity increased by 820,000 Mcf per day from 1,014,000 Mcf per day to 1,834,000 Mcf per day. It is obvious that the increase in flow gas did not result in the dumping of gas for the generation of electric energy by Commonwealth.

An examination of the individual contracts[8] between Commonwealth Edison

---

[7] *National Coal Associations, et al.* v. *F.P.C.*, 247 F. 2d 86.

[8] *Coal producer contracts with Commonwealth Edison showing requirements and minimum deliveries for 1966:*

Exhibit No.	Vendor	Contract dated	Contract tonnage		Commonwealth Edison's requirements 1966 (tons)
			Maximum	Minimum	
110	Truax Traer Coal Co.	6-11-59	1, 250, 000	750, 000	750, 000
112	do	3-13-64	500, 000	200, 000	200, 000
114	The United Electric Coal Co.	6-15-62	2, 250, 000	1, 750, 000	1, 625, 000
115	Peabody Coal Co.	11-29-63		1, 000, 000	1, 115, 000
116	Southwestern Ill. Coal Co.	1-29-63	4, 400, 000	[1] 3, 600, 000	3, 575, 000
117	Peabody Coal Co.	1- 1-63		1, 750, 000	1, 897, 000
118	do	1- 1-59		[2] 2, 000, 000	5, 148, 000
	Subtotal			[3] 11, 050, 000	14, 310, 000
	Uncommitted requirements				1, 515, 000
	Total as shown on Ex. 105				15, 825, 000

[1] Minimum contract quantity increased to this figure on 10-1-66.

[2] This appears to be a "cost of service" type contract guaranteeing Peabody total cost of operations for Commonwealth's coal requirements.

[3] Contract minimum quantity is equal to 69.8 percent of total requirements.

and the various coal producers for the year 1966 shows that the collective minimum tonnage guaranteed deliveries within the contract terms is approximately 11,050,000 tons (this figure is comparable with the 1962 deliveries by all producers to Commonwealth Edison as shown in Exhibit 51, Schedule 5, in the amount of 11,447,222 tons) and that the total coal requirements are approximately 15,825,000. Thus, to all intents and purposes, the present market position of coal is assured.

The Coal Interests have also charged that the Applicant has not made a forthright presentation of all the pertinent data and information for a full and complete understanding of the proposed project. In particular, they point to the absence of a "policy" witness for management who could explain the reasons prompting the submission of the amended application, the lack of cost of service data and the absence of any management witnesses competent to testify upon storage matters.

Section 157.14(a)(16) of the Regulations pursuant to the Natural Gas Act requires that a system estimate of revenue and sales be filed and, in addition, if enlargement or extension of facilities is involved, an estimate of the revenue attributable solely to the proposed facilities shall be stated separately, and the basis and data used in such computations shall be clearly shown.

These requirements have been met in Exhibits 11 and 12 and the testimony of Witness Poole and only in the instance of a new or change in rate is an allocated cost of service study required to substantiate such rates. Since there is no proposed change in the Applicant's rate, no cost of service analysis, as contemplated by Section 157.14(a)(18) is, therefore, necessary.

The burden of proving the feasibility of meeting the Applicant's market requirements from storage rather than pipeline expansion is directly upon the Coal Interests and the Applicant is under no obligation to furnish knowledgeable witnesses for the convenience of the intervenor.

The Examiner, however, permitted the Coal Interests considerable latitude in cross-examination with respect to the matter of storage—although the subject was not related to the Applicant's direct presentation—in order that some appraisal might be made of the feasibility of the suggested alternative. The fact that such cross-examination did not establish the Coal Intervenors' position certainly cannot be charged against the Applicant.

ADDITIONAL FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in this proceeding, including the pleadings, the evidence adduced and the briefs filed, it has been found and concluded, in addition to the findings and conclusions heretofore stated,[9] that:

(1) The Applicant, a Delaware corporation having its principal place of business at Chicago, Illinois, is engaged in the transportation of natural gas in interstate commerce and the sale in interstate commerce of natural gas for resale for ultimate public consumption and is a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The proposed facilities of the Applicant as more fully set forth in its amended Application and the evidence of record in this proceeding, are to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by the

---

[9] Proposed findings not specifically adopted herein are rejected.

Applicant are subject to the requirements of Section 7(c) of the Natural Gas Act.

(3) The Applicant is able and willing to do the acts and perform the services proposed, and to conform to the provisions of the Natural Gas Act as amended and the rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

ORDER

WHEREFORE, *it is ordered*, subject to review by the Commission on appeal or upon its own motion, as provided by its Rules of Practice and Procedure that:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

AMES W. WILLIAMS,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP65-220

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 15, 1965)

On January 21, 1965, Northern Natural Gas Company (Applicant) filed in Docket No. CP65-220 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing an increase in firm deliveries of natural gas through its Peoples Division to the Brockway Glass Company, Inc. (Brockway) for use in Brockway's glass manufacturing plant located near Rosemount, Minnesota, all as more fully set forth in the application.

Applicant proposes to increase firm deliveries to Brockway by 300 Mcf per day, from 1,600 Mcf to 1,900 Mcf.[1] No additional facilities are required and no increase in Peoples' contract demand is needed since the present quantity is sufficient to meet the increased delivery.

---

[1] Delivery of up to 1,600 Mcf per day of firm gas by Applicant to Brockway was authorized by Commission order issued January 19, 1962, in Docket No. CP61-332, 27 FPC 91.

A temporary certificate authorizing the increased firm volume of 300 Mcf per day was issued by the Commission by letter dated February 12, 1965.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 11, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-280 (3 FPC 967).

(2) The proposed increased delivery of natural gas by Applicant through its Peoples Division to Brockway Glass Company, Inc., as hereinbefore described and as more fully described in the application in this proceeding, is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid delivery of natural gas is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) The certificate hereinafter granted should not entitle Brockway Glass Company, Inc., to whom firm deliveries are thereby authorized, to any priorities or rights to additional gas for meeting any future increase in its requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increase in their requirements.

(5) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(6) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, Northern Natural Gas Company, authorizing the increased delivery of natural gas through its Peoples Division to Brockway Glass Company, Inc., as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above shall not entitle Brockway Glass Company, Inc., to whom firm deliveries are authorized therein, to any priorities or rights to additional gas for meeting any future increase in its requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increase in their requirements.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable

Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

ST. MICHAELS UTILITIES COMMISSION, AND COMMISSIONERS OF ST. MICHAELS, MARYLAND v. THE EASTERN SHORE PUBLIC SERVICE COMPANY OF MARYLAND, DOCKET NO. E-7114; STOCKTON LIGHT AND POWER COMPANY (OF MARYLAND), AND STOCKTON LIGHT AND POWER COMPANY (OF VIRGINIA) v. THE EASTERN SHORE PUBLIC SERVICE COMPANY OF MARYLAND, DOCKET NO. E-7117; DELAWARE POWER & LIGHT COMPANY, THE EASTERN SHORE PUBLIC SERVICE COMPANY OF MARYLAND, THE EASTERN SHORE PUBLIC SERVICE COMPANY OF VIRGINIA, DOCKET NO. E-7137; CITY OF DOVER, DELAWARE v. DELAWARE POWER & LIGHT COMPANY, DOCKET NO. E-7175

ORDER DENYING MOTIONS OF DOVER, DELAWARE AND ST. MICHAELS, MARYLAND FOR ORDERS GRANTING INTERIM RATE REDUCTIONS, OMITTING THE INTERMEDIATE DECISION PROCEDURE AND GRANTING ORAL ARGUMENT BEFORE THE COMMISSION

(Issued March 15, 1965)

Complainants Dover, Delaware and St. Michaels, Maryland, at the conclusion of the hearing in these proceedings on February 9, 1965, moved orally on the record for (1) an interim order reducing the wholesale rates and charges of Delaware Power & Light Company and its corporate affiliate, The Eastern Shore Public Service Company of Maryland and waiver of the intermediate decision procedure with respect to certain issues for purposes of accomplishing the interim rate reductions; (2) waiver of the intermediate decision procedure for all purposes if the interim rate reductions are denied; and (3) opportunity for oral argument before the Commission in support of the motions and relief requested.

These motions referred to the Commission on February 17, 1965, by the Presiding Examiner, are supported by staff counsel and opposed by Delaware Power & Light Company, its corporate affiliate, and Intervenor rural electric cooperatives, Accomac-Northampton Electric Cooperative, Choptank Electric Cooperative, Inc., and Delaware Electric Cooperative, Inc. Memoranda setting forth the respective positions of these parties in summary fashion were filed February 15, 1965 (Delaware Power & Light Company and its affiliates), February 17, 1965 (Dover, Delaware; St. Michaels, Maryland; Intervenor Cooperatives and Commission staff).

We believe that the issues presented in those proceedings are sufficiently novel and complex so that we would be assisted by a decision of the Presiding Examiner submitted in accordance with our customary Intermediate Decision Procedure. Accordingly, we are denying the motions of St. Michaels and Dover.

The examiner has set April 30, 1965, as the date by which the last briefs must be filed. We are impressed by the substantial length of time which has already elapsed since these proceedings were initiated. It is our hope that the Presiding Examiner will grant no further extensions of time, will dispense with any oral argument before him and will expedite the preparation of his intermediate decision.

The Commission orders:

The motions of Dover, Delaware and St. Michaels, Maryland be and hereby are denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP65–177

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 15, 1965)

On December 17, 1964, Tennessee Gas Transmission Company (Applicant) filed in Docket No. CP65–177 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale, on a firm basis, of an additional peak day requirement of 1,224 Mcf of natural gas to Lowell Gas Company, Lowell, Massachusetts, an existing customer, all as more fully set forth in the application.

Applicant proposes to render the additional service through the utilization of a portion of the remaining unallocated capacity authorized in Docket No. CP64–165 by Commission order issued July 13, 1964, 32 FPC 114. No construction of additional facilities is proposed in the instant application.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 11, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued July 15, 1947, in Docket No. G–910 (6 FPC 777).

(2) The proposed sale and delivery of natural gas by Applicant to Lowell Gas Company, as hereinbefore described and as more fully described in the application in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The proposed sale and delivery of natural gas is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, Tennessee Gas Transmission Company, authorizing the sale and delivery of natural gas to Lowell Gas Company, as hereinbefore described and as more fully described in the application in this proceeding upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TRANSWESTERN PIPELINE COMPANY, DOCKET NO. CP65-180

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 15, 1965)

On December 18, 1964, Transwestern Pipeline Company (Applicant) filed in Docket No. CP65-180 an application pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(b) of the Regulations under the Act, for a certificate of public convenience and necessity authorizing the construction during the calendar year 1965 and operation of routine field facilities to enable Applicant to take into its certificated main line pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new and existing supplies of natural gas in various producing areas generally coextensive with its system.

The total cost of the facilities covered by this application will not exceed a maximum of $1,200,000, with no single project to exceed a cost of $300,000, which costs are proposed to be financed with funds made available from company operations.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 11, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Transwestern Pipeline Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order accompanying Opinion No. 328 issued August 10, 1959 (22 FPC 391, 402).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 157.7(b)(3) of the Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1965 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $1,200,000, with no single project to exceed a cost of $300,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Transwestern Pipeline Company, to construct during the calendar year 1965 the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(b)(3) of the Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1965, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $1,200,000, with no single project to exceed a cost of $300,000.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TRUNKLINE GAS COMPANY, DOCKET NO. CP65-117

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 15, 1965)

On October 29, 1964, Trunkline Gas Company (Applicant), filed in Docket No. CP65-117 an application as supplemented on January 12, 1965, and February 11, 1965, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and the sale of natural gas, all as more fully set forth in the application on file with the Commission.

Applicant proposes to increase its firm sales of natural gas to Consumers Power Company (Consumers) from 225,000 Mcf per day to 275,000 Mcf per day. Applicant proposes to make available 25,000 Mcf per day on April 1, 1965, and an additional 25,000 Mcf per day on November 1, 1965, pursuant to a letter agreement between the parties, dated July 2, 1964, amending their letter agreement dated October 29, 1963.

Applicant seeks further authorization to construct and operate 3,000 additional horsepower at its mainline compressor stations No. 57, Pollock, Louisiana; No. 75, Shaw, Mississippi; No. 93, Dyersburg, Tennessee; and No. 112, Johnsonville, Illinois; and to construct and operate 6,000 additional horsepower at its mainline stations No. 66, Epps, Louisiana, and No. 84, Independence, Mississippi; and to construct and operate 5,400 additional horsepower at its Station No. 103, Joppa, Illinois; 2,100 additional horsepower at Station No. 210, Kaplan, Louisiana; and 6,000 horsepower at a new compressor station to be designated Station No. 128, Ambia, Indiana. Applicant also seeks authorization to construct and operate one additional river crossing at the Red River, Rapides Parish, Louisiana. This crossing will consist of two 24-inch O.D. lines.

Estimated cost of the proposed facilities is $16,140,000, since the second supplement to its application indicates that $700,000 for gathering facilities, a part of the original application, is to be excluded from this docket. These facilities will be financed initially from funds on hand and short-term bank loans, which subsequently will be replaced with permanent financing through the sale of long-term securities.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application, as supplemented, has been filed.

Applicant states that it has adequate gas supplies to meet the estimated requirements of its expanded system.

At a hearing held on March 11, 1965, the Commission on its own motion received and made a part of the record in these proceedings all evidence, including the application, as supplemented, and exhibits, submitted in support of the authorization sought herein and upon consideration of the record,

The Commission finds:

(1) Applicant, Trunkline Gas Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 29, 1949, in Docket No. G–882 (8 FPC 250).

(2) The facilities hereinbefore described, as more fully set forth in the application, as supplemented, in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sales of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and sales of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Trunkline Gas Company, to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, all as set forth in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the sales and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PUBLIC UTILITIES AND LICENSEES—TRANSMISSION LINE STATISTICS IN ANNUAL REPORT FPC FORM NO. 1, DOCKET NO. R-270

ORDER NO. 294

SUSPENDING CERTAIN INSTRUCTIONS AND PRESCRIBING OTHERS FOR USE DURING THE REPORTING YEAR 1964

(Issued March 16, 1965)*

The schedule "Transmission Line Statistics" on page 442 of the annual report F.P.C. Form No. 1, provides for the furnishing of information with respect to each transmission line operated by the public utility or licensee required to make the report by § 141.1(b) of the Regulations Under the Federal Power Act.

Members of the industry affected, acting through the Public Utility Committee of the Advisory Council on Federal Reports and relayed to us by the Bureau of the Budget, have requested that the individual listing of transmission lines required by the schedule be modified to require individual listing only of the lines having the two highest representative voltages used and that all other lines be reported in group totals only.

The Commission has always welcomed suggested changes in its regulations or reporting requirements and has adopted them when it has been found to do so is in the public interest. Accordingly, we have reviewed the requested change in the light of our needs for the detailed information and the burden it imposes upon the respondents.

---

*Published in the Federal Register on March 20, 1965 (30 F.R. 3707).

In the light of this consideration we have determined to adopt, on a trial basis, for the reporting year 1964, a modification of the suggested change. We are of the view that rather than limiting the individual listings to the companies' lines having the two highest representative voltage which would result in wide differences among the types of line various companies would be required to report on in detail, we should limit the requirement for the individual listing of each line to those having a voltage of 132 kilovolts or greater. This, we believe, will give us the necessary information on the lines which make up the backbone of each utility's transmission system while at the same time eliminating much of the burden imposed by the existing requirements.

The Commission finds:

(1) The amendment to Annual Report FPC Form No. 1 herein adopted is necessary and appropriate for the purposes of the Federal Power Act.

(2) Since the amendment relieves affected parties of an existing requirement, it is unnecessary to comply with the notice and effective date provisions of section 4 of the Administrative Procedure Act.

The Commission, acting pursuant to the authority granted by the Federal Power Act, as amended, particularly sections 304, 309 and 311 thereof (49 Stat. 855, 858, 859; 16 U.S.C. 825c, 825h, 825j), *orders:*

(A) Effective for the reporting year 1964 only, Annual Report FPC Form No. 1, required by § 141.1(b), Subchapter D, Chapter I of Title 18, Code of Federal Regulations, to be filed by public utilities and licensees, subject to the jurisdiction of the Federal Power Commission, is amended by amending instruction paragraphs 1. and 3. to the schedule "Transmission Line Statistics", on page 442 of the said Form No. 1 to read as follows:

> "Transmission Line Statistics
>
> 1. Report information concerning transmission lines, cost of lines, and expenses for year. List each transmission line having nominal voltage of 132 kilovolts or greater. Transmission lines below these voltages may be reported in group totals only for each voltage.
>
> * * * * * * *
>
> 3. Data may be reported by individual lines for all voltages if so required by a state commission."
>
> [Secs. 304, 309, 311, 49 Stat. 855, 858, 859; 16 U.S.C. 825c, 825h, 825j]

(B) This amendment shall be effective upon the issuance of this order.

(C) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NOS. G-2047 AND G-10699

ORDER AMENDING ORDERS ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 16, 1965)

On August 14, 1962, Panhandle Eastern Pipe Line Company (Applicant) filed in Docket Nos. G-2047 and G-10699 an application, as supplemented on June 17, 1963 and December 28, 1964, to amend the Commission's orders issued October

23, 1953, in Docket No. G-2047, 12 FPC 686, and July 9, 1959, in Docket No. G-10699, 22 FPC 19, to authorize Applicant to increase by 6,000 Mcf per day its interruptible deliveries of natural gas to National Distillers & Chemical Corporation (National Distillers) for industrial use by the latter as fuel in its plants near Tuscola, Illinois, during the period September 16 through April 15 of each year, all as more fully set forth in the application, as supplemented, in this proceeding.

In Docket No. G-2047 Applicant was authorized, among other things, to deliver to National Distillers, on an interruptible basis, 7,000 Mcf of fuel gas per day from September 16 through April 15 and 24,000 Mcf of fuel gas per day from April 16 through September 15. In Docket No. G-10699 Applicant was authorized, among other things, to deliver to National Distillers, on an interruptible basis, 5,000 Mcf of fuel gas per day. Combined daily deliveries of natural gas authorized in both dockets are 12,000 Mcf from September 16 through April 15 and 29,000 Mcf from April 16 through September 15.

Applicant states that it has entered into an agreement, dated July 1, 1962, with National Distillers combining the service authorized in the subject dockets. Said agreement provides for the sale of 18,000 Mcf per day of fuel gas from September 16 through April 15 of each year and 29,000 Mcf per day of fuel gas from April 16 through September 15 of each year, all on an interruptible basis. In effect the agreement provides for an increase in deliveries of 6,000 Mcf per day from September 16 through April 15 above the combined presently authorized deliveries in Docket Nos. G-2047 and G-10699.

Further, Applicant requests that all deliveries of gas to National Distillers presently authorized in Docket Nos. G-2047 and G-10699, as well as the additional 6,000 Mcf winter deliveries herein proposed, be authorized in Docket No. G-2047 and that the authorization to deliver gas to National Distillers in Docket No. G-10699 be deleted.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on January 15, 1965, (30 F.R. 557). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's orders, issued October 23, 1953, in Docket No. G-2047 and July 9, 1959, in Docket No. G-10699 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued October 23, 1953, in Docket No. G-2047 be and the same is hereby amended to authorize Applicant to transport and deliver, on an interruptible basis, to National Distillers a total of 18,000 Mcf of fuel gas per day from September 16 through April 15 of each year and a total of 29,000 Mcf of fuel gas per day from April 16 through September 15 of each year, all as hereinbefore described and as set forth in the subject application to amend, as supplemented.

(B) Ordering paragraph (D)(2)(iii) of the Commission's order issued October 23, 1953, in Docket No. G-2047, which requires the filing of annual reports showing the volumes of gas delivered monthly to National Distillers at Tuscola, be and the same is hereby amended to require the volumes so reported to be broken down into (a) shrinkage volumes due to extraction of liquid and (b) fuel gas volumes. Further, such reports shall show the maximum day delivery volume, by classes, during each month and the date of such maximum delivery.

(C) The certificate issued hereby is granted on the express condition that the interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

(D) The Commission's order issued July 9, 1959, in Docket No. G-10699 be and the same is hereby amended to delete therefrom authorization for the transportation and delivery, on an interruptible basis, by Applicant to National Distillers of 5,000 Mcf of fuel gas per day.

(E) In all other respects said orders shall remain in full force and effect.

Commissioner O'Connor *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

LOWER VALLEY POWER AND LIGHT, INC., PROJECT NO. 2168

ORDER APPROVING REVISED PROJECT EXHIBIT AND FIXING ANNUAL CHARGES

(Issued March 17, 1965)

On February 14, 1964, Lower Valley Power and Light, Inc., licensee for transmission line Project No. 2168, filed for Commission approval a revised Exhibit K map showing the project area occupied by the transmission line under the license. The exhibit was filed pursuant to Article 15 of the license.

The effect of our approval of the exhibit will be to fix the annual charges for the use by the line of lands of the United States. The exhibit shows that the line occupies a 50-foot wide right-of-way about 8.082 miles in length over lands of the United States, part of which are within the Targhee National Forest. The annual charge for the use of lands of the United States by the line is based on $8.00 per mile for a 100-foot wide right-of-way.

The Commission finds:

(1) Exhibit K (Revised) (FPC No. 2168-3) conforms to the Commission's rules and regulations and should be approved as part of the license for the project.

(2) The annual charges under the license for recompensing the United States for the use, occupancy, and enjoyment of its lands by the transmission line are reasonable as hereinafter fixed and specified.

The Commission orders:

(A) The exhibit described in finding (1) above is hereby approved as part of the license for transmission line Project No. 2168.

(B) Subparagraph (ii) of Article 17 of the license for the project is hereby revised to read as follows:

(ii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands for transmission line right-of-way, the amount of $32.33.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgement of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

COLORADO INTERSTATE GAS COMPANY, DOCKET NO. CP65-145

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 18, 1965)

On November 20, 1964, Colorado Interstate Gas Company (Applicant), filed in Docket No. CP65-145 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a hydrocarbon extraction plant at its Rawlins Compressor Station site in order to control the Btu content of its Wyoming supply of gas flowing to the Denver, Colorado market area, all as more fully set forth in the application.

The subject plant, having a design capacity of 220,000 Mcf per day, will lower and stabilize the wide-ranging heat content of Applicant's Wyoming gas stream at approximately 1031 Btu per cubic foot. Applicant states that the Wyoming gas supply must be controlled in order to conform with the heat content provisions contained in its FPC Gas Tariff, and to alleviate existing operational problems faced by its customers in the Denver area, Applicant's existing operating conditions limit the volumes of Wyoming gas which can be delivered to the Denver area, and require the utilization of certain compressor facilities on certain days which otherwise would be unnecessary.

The application shows that without the proposed plant Applicant will be forced to inefficiently route gas from its southeastern gas sources to the Denver area to blend with high Btu content Wyoming gas, resulting in volumes of gas exceeding the requirements of the Denver area. The distributors in the Denver blending site were forced to a costly program of re-orificing when Applicant first commenced receiving Wyoming gas. Prior to that time, approximately 980 Btu gas was delivered into these areas. Advent of the high Btu gas required appliances to be orificed to accommodate gas with heat content ranging from 980 to 1031 Btu. Since then, the Btu content of Wyoming gas has at times reached 1075 Btu; this, according to the distributors is uncomfortably close to another re-orificing.

Applicant has agreed that products revenues in excess of the plant costs will be credited to its system cost of service.

The estimated cost of the facilities is $4,882,000; capital required for construction will be obtained through a combination of current working funds and any necessary short-term loans.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 11, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorizations, and upon consideration of the record,

The Commission finds:

(1) Applicant, Colorado Interstate Gas Company, a Delaware corporation having its principal place of business in Colorado Springs, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued June 5, 1945, in Docket No. G-294 (4 FPC 936).

(2) The proposed construction and operation of facilities, as hereinbefore described and as more fully set forth in the application and exhibits in this

proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, authorizing the construction and operation of facilities as more fully described in the application in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 18 months from the date on which this order issues.

(D) This order is without prejudice to any findings or orders which have been or may be made hereafter by the Commission, and is without prejudice to claims or contentions which may be made by the Commission, Colorado Interstate, the Commission staff, or any affected party herein, in any proceeding now pending or hereafter instituted by or against Colorado interstate, or any other companies, persons, or parties affected by this order.

OPINION NO. 456

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. RP61-8

OPINION AND ORDER DETERMINING APPLICABILITY OF LIBERALIZED DEPRECIATION AND REFUNDS

(Issued March 18, 1965)*

Syllabus

1. Determining that liberalized depreciation principles of *Alabama-Tennessee* are applicable to pipeline here, Commission finds flow-through and lower rates more effective stimulus to new investment than normalization and provides for deduction of accumulated reserves from rate base, unless pipeline submits appropriate plan for flowing through some or all of such reserves to customers. P. 576.

---

*Rehearing granted by order issued May 12, 1965, unreported. See Opinion No. 456-A issued June 23, 1965, 33 FPC 1277. Generally affirmed; remanded on one aspect, *City of Chicago v. F.P.C.*, —— F. 2d ——. (CADC-1967).

2. **All parties agree that settlement agreement represents a binding contract. P. 576.**
3. **There is no language in the settlement which can fairly be interpreted as requiring refunds retroactive to date rate increase was put into effect. P. 577.**
4. **Question of proper treatment of liberalized depreciation is uniquely a matter for Commission's informed judgment. P. 578.**
5. **Prior treatment of deferred taxes for rate purposes at a one and one half percent rate of return was not illegal. P. 578.**
6. ***Agreeing* that pipeline customers should not bear loss of refunds since date of *Alabama-Tennessee*, Commission puts Natural on par with Alabama-Tennessee and *orders* refunds back to February 3, 1964. P. 578.**
7. **In proceedings initiated under Section 4 of the Natural Gas Act, Commission *determines* applicability of liberalized depreciation and *orders* refunds.**

Commissioner O'Connor *concurring* in result.

Commissioner Black, *dissenting in part*.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SWIDLER, *Chairman:*

In our Opinion No. 367, 28 FPC 731, on October 25, 1962, approving the recent settlement of a rate case in these proceedings the Commission reserved the question of the proper treatment for ratemaking purposes of the higher deductions from Federal income taxes made available by liberalized depreciation under Section 167 of the Internal Revenue Code. In *Alabama-Tennessee Natural Gas Co.*, 31 FPC 208, Opinion No. 417, Docket No. G–5471, *et al.*, February 3, 1964, the practice of normalization, formerly permitted by the Commission,[1] was found no longer justified with respect to that Company. The initial question is whether the principles of *Alabama-Tennessee* are applicable to Natural. If we conclude that they are, the question here arises as to the date on which the flow-through treatment of liberalized depreciation adopted in *Alabama-Tennessee* is to be made effective for Natural and the amount of any refunds which Natural must make to its customers in the Chicago area.

This proceeding began as a Section 4 rate case. After the hearings ended, a settlement agreement was reached and made part of the record on June 21, 1962 (Tr. 2954). In the settlement the question of the appropriate treatment of liberalized depreciation and consolidated taxes was reserved. We approved the agreement in Opinion No. 367, 28 FPC 731, on October 25, 1962. On May 11, 1964, the City of Chicago filed a motion requesting that the Commission decide the liberalized depreciation issue, and on May 19, 1964, Natural filed its answer and a proposal to reduce its rates as of October 1, 1965, stating that it was willing to waive its right to conduct further proceedings to show cause why the determination in *Alabama-Tennessee* is not applicable to Natural if the Commission approved its proposal. Under the proposal Natural's reduced rates would reflect the holding in *Alabama-Tennessee*. Thus, in computing its rates Natural would deduct the balance of deferred taxes in Account 282 from its rate base and would flow-through the tax reduction resulting from liberalized depreciation unless it elected to abandon use of liberalized depreciation by October 1, 1965. Natural also proposed that the rate reduction would be deferred beyond October 1, 1965, until *Alabama-Tennessee* became final, but, if so, Natural would pay a refund from that date if the Commission were upheld. Chicago objected to the rate reduction proposal arguing that the utilization of liberalized depreciation by Natural should in accordance with the principles enunciated in *Alabama-Tennessee* be flowed through to its customers and under the settlement agreement Natural should put its rate reduction in effect as of March 1, 1961.

---

[1] *Amere Gas Utilities Co.*, 15 FPC 781, and *El Paso Natural Gas Co.*, 22 FPC 260, 267.

In our order of July 31, 1964, 32 FPC 478, we recited that Natural had filed a rate reduction proposal, in which it had waived its right to contest the applicability of *Alabama-Tennessee* to it if we approve the proposal. The order makes clear, however, that the reopened proceeding was not limited to consideration of Natural's proposal and provided broadly for the filing of briefs on all questions relating to the reserved issue of liberalized depreciation. Briefs were accordingly filed by Natural, our staff, and Chicago, whose brief the Public Service Commission of Wisconsin adopts.

Initially, it is clear that we must determine whether the principles of *Alabama-Tennessee* are applicable to Natural. The settlement agreement calls for determination of this question, and our order of July 31, 1964, required briefs on it. Natural did not submit additional evidence on the question, and did not argue the question in its briefs, although our order gave it opportunity, and indeed called for such argument. The hearing record in the case made prior to the original settlement contains undisputed evidence showing that, like the pipeline industry as a whole, Natural is an expanding enterprise, and will continue to expand in the foreseeable future. Natural apparently does not dispute the fact it is properly subject to the principles enunciated in *Alabama-Tennessee* if that case is upheld. As with *Alabama-Tennessee,* we are of the opinion that flow-through and lower rates are a more effective stumulus to new investment than normalization, and, as in that case, we shall provide for deduction of the accumulated reserves from the rate base, unless Natural submits an appropriate plan for flowing some or all of such reserves through to its customers.

We now turn to the question as to the date on which Natural should give effect to these principles. All parties agree that the settlement agreement represents a binding contract; the controversy arises over its effect. The agreement provides in Section IV (2) as follows:

> 2. The question of whether Natural, in computing its cost of service for rate purposes, should compute its federal income tax expense allowance by "normalizing" such taxes to eliminate the effect of Section 167 of the Federal Internal Revenue Code, which relates to "accelerated" or "liberalized" depreciation, or by utilizing the principle of "flow-through" of the tax effect of the use of such "accelerated depreciation" deductions for tax purposes, as proposed and defined by the City of Chicago in these proceedings, rather than the "normalization" method, shall be determined by an adjudication by the Commission in these proceedings and this issue shall not be terminated by approval of the settlement proposed hereunder.
>
> To permit a resolution of this issue at the earliest possible date, however, all parties hereto request that in lieu of any intermediate decision proceedings herein, the Commission render a final decision with respect to such issue and, pursuant to the requirements of Section 1.30(c) of the Commission's Rules of Practice and Procedure, request the opportunity to file briefs relating to this issue, inclusive of proposed findings and conclusions, in accordance with a briefing schedule to be prescribed by the Commission, and to thereafter present oral argument to the Commission relating thereto; each party, subject to the foregoing, reserving its right to apply for rehearing and petition for judicial review of the Commission's decision with respect to such issue.
>
> In the event it shall be determined in these proceedings by a valid and final order of the Commission that Natural, in computing its cost of service in

> these proceedings, must utilize the above mentioned "flow through" method of tax computation, Natural, subject to its right to seek judicial review thereof, shall make such further refunds, with interest at 7 per cent per annum from the 20th day of each month in which each excess payment was collected, to the date Natural refunds such excess payment, as shall result from the reduction, if any, in the level of any of the rates contained in its FPC Rate Schedules that may be required by the Commission at the time of such order; provided, however, that Natural's obligation to make a refund hereunder shall not become effective unless and until the aggregate sum refundable under this Paragraph (2) shall be equal to $100,000.
>
> It is agreed that the difference between the depreciation deduction used in computing the Federal Income Tax allowance by use of the above mentioned "normalization" method, which is included in the cost of service of $137,014,823, and the depreciation deduction for such tax allowance purposes, relative to such cost of service, which would have resulted from use of the above mentioned "flow through" method, is $7,928,320. Any refunds and/or rate reductions made by reason of this Section IV(2) shall be made as described in the last paragraph of Section IV(1) above.

In interpreting this agreement both Chicago and the staff argue that it provides for a full refund for the entire period that excess rates were collected. They contend that the treatment of liberalized depreciation was the issue reserved, and, once it is decided that normalization is improper, Natural's cost of service should be adjusted and refunds should follow automatically from March 1, 1961. Natural on the other hand contends that there should be no refunds prior to October 1, 1965, assuming that the Commission is upheld by the Courts in *Alabama-Tennessee.*

It is entirely clear to us that the agreement was drafted with the possibility of refunds in mind. Thus it is provided that "In the event it shall be determined" that Natural must use "flow-through", it "shall make such further refunds * * * as shall result from the reduction, if any, in the level of any of the rates contained in its FPC Rate Schedules that may be requested by the Commission. * * *" However, it is also clear that the refund is made contingent on the action we might take on the question of liberalized depreciation and there is no language in the settlement which can fairly be interpreted as requiring us to order refunds retroactive to the date the rate increase was put into effect by Natural.

Chicago cites a letter of May 10, 1962, written to its corporation counsel by counsel for Natural explaining the proposed settlement agreement. There it is stated that "Natural also agrees to go to trial before the FPC on two issues and if it loses on either, to make additional refunds and rate reductions. * * *" Even if this letter is admissible as an explanation of the settlement agreement, there is nothing in this language which supports a conclusion that the parties agreed on March 1, 1961 as the effective date for making refunds. Under the language of this letter, as in the settlement agreements, the question of refunds is dependent on our decision herein with respect to liberalized depreciation. The question before us is to determine the appropriate date for refunds in light of all of the circumstances of this case.

Opinion No. 367 approving the settlement does not lead to a different result. The relevant language reads as follows (28 FPC at p. 733):

> The second issue is whether Natural should "normalize its tax expense to eliminate the effect of Int. Rev. Code § 167, relating to accelerated depreciation, or should compute its tax expense on the basis of taxes actually paid during the test year (1960). The settlement provides further that pending

> our decision on these issues, Natural shall collect revenues subject to refund based upon a 52% tax rate and "normalized" depreciation.

This language, like that in the settlement agreement, does not require a refund as of any particular date, although it does contemplate a refund if that should be required by our determination.

Both Natural and Chicago claim support for their position from our decision in *Alabama-Tennessee.* We agree with Chicago that the reference to the present proceeding in Opinion No. 417[2] conveys no more than that the same substantive issue was presented in both cases. We also agree that it was not a commitment that we would make any determination here prospective from the date of this order or from the October 1965 date proposed by Natural. On the other hand, there is nothing in this language to suggest that our substantive determination here *must* be made retroactive to March 1, 1961.

The question of the proper treatment of liberalized depreciation is uniquely a matter for the Commission's informed judgment. While we have decided that for the future flow-through should be the normal rate treatment of liberalized depreciation (and the normal accounting treatment as well) and specifically that it should be applied to Natural, our previous treatment of deferred taxes for rate purposes at a 1½ percent rate of return was not illegal. See *Panhandle Eastern Pipe Line Co.* v. *F.P.C.*, 316 F. 2d 659 (CADC), certiorari denied, 375 U.S. 881. If we had chosen to utilize the instant case rather than the *Alabama-Tennessee* proceeding as the vehicle for reconsidering our previous policy, we would have applied our new policy of flowing through the tax benefits resulting from the use of liberalized depreciation and deducting the accumulated reserves from the rate base prospectively only as we in fact did in *Alabama-Tennessee.* Nothing in the settlement stipulation or anything else which has been brought to our attention would have required a different conclusion.

We do agree with Chicago, however, that it should not have to bear the loss resulting from the time that has elapsed since our decision a year ago in *Alabama-Tennessee.* We think the most equitable resolution of this matter is to put Natural on a par with *Alabama-Tennessee.* We shall therefore order refunds back to February 3, 1964.

Natural's selection of an October 1965 date seems to reflect the view that it is entitled to be put on a par with American-Lousisana, Michigan-Wisconsin, Panhandle and Trunkline rather than Alabama-Tennessee. With respect to each of these four pipelines, rate settlements agreeable to their customers as well as the

---

[2] Opinion No. 417 stated 31 FPC at p. 209:

> The same issue was also deferred in a number of Commission orders prescribing future rates for other natural gas pipeline companies, conditioned on the decision in this case.[3] In thus reserving this issue, we uniformly provided that any changed policy which might be formulated in this proceeding would have only a prospective effect on the rates and charges of the individual pipelines concerned. We are aware that a number of such pipelines have argued in these proceedings that the result we reach here cannot be made binding upon them in the absence of further proceedings. While we are not convinced as to the validity of such arguments, we shall afford such other pipelines an opportunity to show cause why the determination we are making here is not applicable to them. Accordingly, the decision rendered herein will constitute the final element in determining a just and reasonable level of return for *Alabama-Tennessee* and a proposed decision on this point with regard to the various other pipelines with respect to which this specific issue has been reserved.
>
> [3] *American Louisiana Pipe Line Co.* and *Michigan Wisconsin Pipe Line Company,* Opinion No. 363, issued September 17, 1962, 28 FPC 482; *El Paso Natural Gas Company,* Opinion No. 366, October 19, 1962, 28 FPC 688; *Southern Natural Gas Company,* Opinion No. 379, February 18, 1963, 29 FPC 323; *Natural Gas Pipeline Co. of America,* RP61-8, Opinion No. 367, October 25, 1962.

Commission were subsequently reached, after our decision in *Alabama-Tennessee*, under which they agreed to flow through the benefits of liberalized depreciation commencing in October 1965, subject to the outcome of the pending litigation in *Alabama-Tennessee*.[8] In none of those proceedings did the settlement actually reserve the liberalized depreciation issue or provide that the pipeline agreed to make such refunds as the Commission might order.

In the case of American-Louisiana and Michigan-Wisconsin, unlike Natural, no evidence had been introduced on the question of the treatment of liberalized depreciation, and the issue was confined to whether a return should be allowed on accumulated deferred taxes as formerly prescribed in the *Northern Natural* case, 25 FPC 431. A further hearing would have been required before flow-through could be implemented. For that reason the October 1, 1965 date was agreed upon in settlement negotiations (which also provided for certain other reductions in Michigan-Wisconsin's rates) as the date by which a Commission decision on this matter after hearing could have been reached. Thus there was avoided the necessity for such a hearing while *Alabama-Tennessee* was being reviewed in the courts.

With respect to Panhandle and Trunkline, the situation is even less analogous. Neither of these companies were subject to any contingent liability with respect to their use of liberalized depreciation and neither had pending rate increase proceedings. Instead, as a result of informal representations made by the Commission's staff following its review of the pipelines' earnings for calendar year 1963, the two companies, as part of an overall proposal which involved filing immediate rate reductions, agreed also to file further reductions to reflect the flow-through of liberalized depreciation as of October 1965, contingent upon the outcome of the *Alabama-Tennessee* case.

The Commission further finds:

(1) Natural will maintain a growing or stable plant for the foreseeable future.

(2) Rate flow-through will effectively and substantially promote expanded plant investment by Natural and will best implement the fundamental objective of Section 167 of the Internal Revenue Code, to benefit the national economy by stimulating plant modernization and expansion.

(3) Accumulated "deferred tax" balances should be maintained intact and retained by Natural as a contingency reserve (not a segregated fund) and withdrawn only to offset any increased taxes resulting from a decline in overall tax depreciation deductions, attributable to earlier use of liberalized depreciation, on all depreciable properties used in rendering public service, below the level of the normal tax deductions under straight-line depreciation, or until amortized pursuant to a plan approved by the Commission.

(4) There is no present factual justification for normalizing the rates of Natural after the date of issuance of our Opinion No. 417, *Alabama-Tennessee Natural Gas Co.*, 31 FPC 208, Docket No. G-5471, *et al.*, on February 3, 1964, so that rates should reflect only the actual taxes currently payable based upon the cost of service set forth in the stipulation of June 21, 1962.

(5) Natural is not entitled to any return on accumulated amounts in Account 282, Accumulated Deferred Income Taxes—Liberalized Depreciation, so that amounts included in Account 282 should be excluded from the rate base.

---

[8] *American Louisiana Pipe Line Co.*, 31 FPC 1579, Docket No. G-18419, June 23, 1964; *Michigan Wisconsin Pipe Line Co.*, 31 FPC 1579, Docket No. RP64-38, June 23, 1964; *Panhandle Eastern Pipe Line Co.*, 31 FPC 736, Docket No. RP64-18, March 30, 1964; *Trunkline Gas Co.*, 31 FPC 743, Docket No. RP64-19, March 30, 1964.

(6) Natural should file reduced rates, and should make refunds for the period commencing February 3, 1964 to reflect the flow-through of tax reductions resulting from the application of Section 167 of the Internal Revenue Code and to reflect the deduction from its rate base of balances in Account 282.

The Commission orders:

(A) Within 30 days of the date that the decision in *Alabama-Tennessee*, Opinion No. 417, becomes final, Natural shall file new rate schedules, effective immediately, reflecting the lower Federal income tax allowance and the lower rate base referred to above conforming to the stipulation of June 21, 1962, and satisfactory to the Commission.

(B) Within 30 days of the date of issuance of the order Natural shall refund to its jurisdictional customers for the period from February 3, 1964, to the date of refund the difference between the amounts collected and those which would have been collected for such period under the rate schedules required to be filed by this paragraph, together with interest at the rate of 7 percent per annum from the date of payment to Natural to the date of refund.

(C) Within 30 days of making the refunds required by Paragraph (B) Natural shall report to the Commission in writing and under oath the details of its calculations resulting in the refunds together with copies of releases from each of its jurisdictional customers.

Commissioner O'Connor *concurring* in the result.

Commissioner Black *dissenting in part.*

O'CONNOR, *Commissioner, concurring* in result:

In view of my disagreement with the principles enunciated in *Alabama-Tennessee Natural Gas Co.*, 31 FPC 208 (1964), I am compelled to make a short statement of my position in this proceeding. I adhere to my separate views expressed in that opinion. See my dissenting statement, 31 FPC, at 232, and Commissioner Woodward's dissenting statement, 31 FPC, at 222, with which I expressly joined. Nevertheless, a majority of the Commission endorses that opinion, which is presently being reviewed by the courts. Pending reversal by judicial decision or otherwise, I believe it proper to accept it as the governing expression of Commission policy. Accordingly, I join in consideration of the primary issue in this proceeding: the appropriate date, considering the settlement involved herein, that the policy is to be implemented. For the reasons stated by the majority, I agree that the date applied in *Alabama-Tennessee* should also be followed in this proceeding.

BLACK, *Commissioner, dissenting in part:*

I disagree with the majority opinion because its effect is to withhold from the customers of Natural Gas Pipeline Company in the Chicago area the sum of $28.5 million, plus interest, which rightly belongs to them and to their retail consumers who, for the past four years, have been paying more than they should for gas service. The Commission should order Natural to refund the excess revenues collected by reason of its "normalized" treatment of liberalized depreciation for the entire period the inflated rates have been in effect; that is from March 1, 1961, to the present.

This proceeding was initiated by Natural in October, 1960, under Section 4 of the Natural Gas Act for the purpose of raising its rates. The proposed rates were suspended by Commission action and set for hearing. The suspension period expired and the higher rates became automatically effective March 1, 1961, subject to refund of all amounts collected above the rate which the Commission would, under normal circumstances, determine to be just and reasonable. The parties, however, after full hearing entered into a settlement agreement which the Commission approved in October of 1962, and which provided, *inter alia*, for refund of excess revenues collected from and after March 1, 1961. Not resolved by the parties was the question of the proper rate-making treatment of liberalized depreciation. The settlement agreement by its terms reserved this issue for later determination by the Commission "in these proceedings," and provided that should the Commission decide the "flow-through" method of tax computation to be proper, then Natural would "make such further refunds, with interest at 7 percent per annum from the 20th day of each month in which each excess payment was collected, to the date Natural refunds such excess payment. * * *"

It is not at all uncommon in settlement proceedings or, for that matter, in fully adjudicated cases, for the parties or the Commission to reserve an issue for subsequent determination. When the severed issue is decided, unless specific provision is made to the contrary, it will relate back in time, utilizing the same test period, and fit into the agreement or the decision of the Commission just as if it had been decided along with the other issues.[1] No contrary intent was evidenced by the parties to the settlement agreement in this case, nor do the circumstances here warrant contrary treatment by the Commission.

The majority erroneously relates the refund period here to the *date* of our decision in *Alabama-Tennessee*. While it is true that that decision stands for the proposition that flow-through is the proper rate-making treatment of liberalized depreciation—the same issue that was reserved in the instant case—it was not in the contemplation of the parties that *Alabama-Tennessee* was, as such, the missing piece. They could easily have made such provision in their settlement agreement, but that document doesn't mention *Alabama-Tennessee*. A matter of such vast importance and involving so many millions of dollars in refunds would hardly have been left to inference. If the parties to this case intended that application here of a legal and policy decision to be made some time in the indefinite future in another case, would be prospective from the date that case was decided, clearly they would have said so. It is especially noteworthy that the Commission order in *Alabama-Tennessee* and in the other dockets reserving the issue of liberalized depreciation did expressly provide that its future orders resolving that issue would have prospective effect only.[2]

The Commission rather defensively maintains that while it *could* pick a date earlier than the date *Alabama-Tennessee* was decided for the computation of refunds, it isn't *required* to do so. I disagree. The settlement agreement constitutes a contract which this Commission is not empowered to rewrite for the parties. This case was settled, with our approval, between Natural and its customers on certain definite terms and conditions. One such condition was that should flow-through be decided properly to control Natural's use of liberalized depreciation for rate-making purposes, then Natural would make further refunds reflecting the excess revenues, with interest, from "the 20th day of *each month in which excess payment was collected.* * * *"—not each month after *Alabama-Tennessee* was decided. Indeed, it would seem most unlikely that responsible business management would arrive at an understanding affecting millions of dollars, and leave the measurement of this sum to the uncertain future determination by this Commission of a similar controversy in another case. It may be conceded that the parties, mindful of the pendency of *Alabama-Tennessee*, recognized the necessary applicability of whatever decision the Commission might make in the case, to the facts of the instant case. But it does not follow at all that the *date* of the *Alabama-Tennessee* decision was intended to affect the amount of refunds. Our decision in *Alabama-Tennessee* might have been months away or years away. It is impossible for me to believe that settlement of Natural's rate case was arrived at with such a huge variable intended—one not related to any substantive issue of law, fact, or policy.

---

[1] *Cities Service Gas Company*, Docket No. G–18799, issued March 27, 1961, 25 FPC 582; Opinion No. 396, issued July 15, 1963, 30 FPC 158.

[2] *Alabama-Tennessee Natural Gas Company*, Opinion No. 360, issued June 13, 1962, 27 FPC 1180; *American Louisiana Pipe Line Company* and *Michigan Wisconsin Pipe Line Company*, Opinion No. 363, issued September 17, 1962; *El Paso Natural Gas Company*, Opinion No. 366, issued October 19, 1962; *Southern Natural Gas Company*, Opinion No. 379, issued February 18, 1963.

This Commission approves settlements only if all the parties agree to the settlement. Here we have approved one settlement on the basis of which the parties discontinued their litigation. We are now, three years later, imposing on them an entirely different "settlement." In my opinion the parties clearly would not have consummated their agreement had they known what would happen to it at the hands of the Federal Power Commission.

It may be that Natural made a bad bargain; but a bargain it was, nonetheless, and it is not incumbent on us to relieve them of it. The majority justifies the result on "equitable" grounds. The gas consumers in the Chicago area who are, in the final analysis, being compelled to bestow a windfall of more than $30 million on Natural Gas Pipeline Company of America, will surely be surprised to learn that this constitutes "equity" in the view of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman: L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PITTSBURGH PLATE GLASS COMPANY, CHEMICAL DIVISION (FORMERLY COLUMBIA SOUTHERN CHEMICAL CORPORATION), DOCKET NO. E-6406

ORDER TERMINATING AUTHORIZATION FOR PERMANENT CONNECTION FOR EMERGENCY USE

(Issued March 18, 1965)

The Commission, by order issued February 18, 1954 (13 FPC 825) in the above-entitled matter, authorized Columbia-Southern Chemical Corporation, now Pittsburgh Plate Glass Company, Chemical Division (Applicant), to maintain and use a permanent connection for emergency use between its facilities and those of Gulf States Utilities Company at West Lake, Louisiana.

By application filed December 21, 1964, Applicant states that the emergency use of the interconnection which was caused by a deficiency in generating capability in the electric power system of Gulf States in Southwest Louisiana no longer exists; therefore, the interconnection is no longer needed, and the Applicant and Gulf States have agreed to cancel, effective December 1, 1964, the aforesaid agreement dated December 13, 1951. The facilities will no longer be used for emergency use only.

The Commission orders:

The authorization heretofore granted by order of the Commission issued February 18, 1954 in the above-entitled matter is hereby terminated.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CAROLINE HUNT SANDS AND LOYD B. SANDS, DOCKET NO. RI64-356

ORDER

(Issued March 18, 1965)

This proceeding involves a rate increase from 23.55¢ per Mcf to 24.55¢ per Mcf filed on November 1, 1963, by Caroline Hunt and Loyd B. Sands (Sands) for sales of natural gas to Hope Natural Gas Company (Hope) from the South Thornwall Field in Southern Louisiana. An immediate hearing was ordered on the increase because it was the highest price on file for sales in this area and could possibly serve as a basis for price redeterminations under other producer contracts. (See Commission order issued in this proceeding, November 26, 1963). Interventions were filed by the Public Service Commission of the State of New York, the Pennsylvania Public Utility Commission, the United Gas Improvement Company, and Hope.

At the hearing in this proceeding cost of service evidence pertaining to Sands was introduced by both Sands and staff and in addition staff introduced evidence intended to prove that Sands operates as part of an organization comprised of the various members of the H. L. Hunt family and argued that the combined cost of all the Hunts should be considered. At the examiner's request both staff and Sands presented carved-out costs for the two leases from which the sales involved in this proceeding are made. On the basis of these carved-out costs the examiner found that the rate increase was justified.

As pointed out by the exceptions of staff and certain intervenors it would appear that the examiner was in error in relying solely on carved-out costs to justify this increase. *Hunt Oil Co., et al.*, 28 FPC 623, *H. L. Hunt, et al.*, 28 FPC 897, *Socony Mobil Oil Co., Inc.*, 27 FPC 347. Sands also introduced company-wide evidence of costs which it claimed justified the increase but this evidence was contested by staff which submitted cost figures to show that Sands' cost would not exceed 20¢ per Mcf, whether such costs were computed on the basis of treating the Hunt group as one entity or treating Sands as a separate corporation. We do not find it necessary to pass on this evidence at this time.

Neither is it necessary nor appropriate at this time to determine a just and reasonable rate under any of the theories proposed because the increased rate was filed in violation of a moratorium provision in the certificate under which the sale is being made.

A permanent certificate was originally granted for this sale on August 10, 1959, at an unconditioned price of 23.55¢ in Opinion No. 337 (22 FPC 378). The Court of Appeals for the District of Columbia reversed this opinion "insofar as it grants unconditioned certification to the initial price proposals." *Public Service Commission of New York* v. *F.P.C.*, 287 F. 2d 146, certiorari denied, *sub nom. Hope Natural Gas Co.* v. *Public Service Commission of New York*, 365 U.S. 880. Upon remand the Commission determined in Opinion No. 398 (30 FPC 283) issued July 17, 1963, that the proper initial price for this sale was 20¢ per Mcf including taxes and that in addition a moratorium on the filing of any increase above 23.55¢ including taxes should be imposed.

The Court of Appeals for the Fifth Circuit granted a stay of Opinion No. 398 on January 15, 1964, and reversed it in *Callery Properties, Inc.* v. *F.P.C.*, 335 F. 2d 1004 (August 14, 1964). Petitions for a writ of certiorari were granted by the Supreme Court on March 8, 1965. If the Supreme Court upholds the Commission's moratorium it would be effective as of July 17, 1963, and the rate increase here in issue would be rejected as of the date of filing because it is in violation of the moratorium.

If the moratorium is not upheld by the Supreme Court this sale will again be before the Commission in a certificate proceeding where the Commission will be required to determine whether the public interest and the public convenience and necessity require certification of this sale under the terms of a contract which would authorize sales at a price of 24.55¢.[1]

Accordingly, the Commission orders:

Further proceedings in this docket are deferred pending decision by the Supreme Court in *F.P.C.* v. *Callery Properties, Inc., et al.*, 335 F. 2d 1004 (CA5-1964), or until further order of the Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SOUTH CAROLINA ELECTRIC & GAS COMPANY, DOCKET NO. E-7146

ORDER REQUIRING RESPONDENT TO APPLY FOR AND SECURE A LICENSE

(Issued March 18, 1965)*

On December 30, 1963, the Commission issued an order (30 FPC 1630) requiring the South Carolina Electric & Gas Company (Respondent) to show cause why it should not apply for and secure a license for its Stevens Creek hydroelectric project in Georgia and South Carolina. The project is on the Savannah River, about 8.7 miles upstream from Augusta, Georgia. The Savannah River is a navigable water of the United States. See *United States* v. *Twin City Power Co.*, 350 U.S. 222.

In its answer the Respondent states that it operates the project by virtue of a War Department permit issued to its predecessors on July 20, 1910. The Respondent further states that authority to issue the permit stemmed from: (1) a special act, approved August 5, 1909 (36 Stat. 180), and extended March 5, 1912 (37 Stat. 72); (2) the General Dam Act of 1906 (34 Stat. 386), as amended June 23, 1910 (36 Stat. 593).

The Respondent recognizes that its permit was subject to the 1910 amendment of the General Dam Act, containing the important innovation that War Department permits would terminate at the end of a period not to exceed fifty years. The fifty-year limitation, and an exception to it on which the Respondent relies, are as follows:

> * * * the authority granted under or in pursuance of the provisions of this Act shall terminate at the end of a period not to exceed fifty years from the date of the original approval of the project under this Act, unless sooner revoked as herein provided or Congress shall otherwise direct: *Provided, however*, That this limitation shall not apply to any corporation or individual heretofore authorized by the United States, or by any State, to construct a dam in or across a navigable waterway, upon which dam expenditures of money have heretofore been made in reliance upon such grant or grants. § 4, 36 Stat. 593, 595 (1910).

Respondent's permit, and its amendments, came before us in the headwater benefits case of *South Carolina Electric & Gas Co.*, 29 FPC 624, Op. No. 384, Docket No. E-6468, March 28, 1963, *aff'd sub nom. South Carolina E & G Company* v. *F.P.C.*, 338 F. 2d 898 (CA-4). The permit and supplemental instruments of approval reveal that there was no construction work on the dam until well after the 1910 amendment of the General Dam Act. The supplemental approval by the War Department, issued November 16, 1912, provided:

---

[1] "Where the application on its face or on presentation of evidence signals the existence of a situation that probably would not be in the public interest, a permanent certificate should not be issued" *Atlantic Refining Co. v. Public Service Commission of New York*, 360 U.S. 378 at 391 (1958).

*Opinion No. 459 issued May 11, 1965 denied rehearing and grants stay, 33 FPC 984.

> That whenever said company shall commence the actual construction of said dam, lock or appurtenances, as provided under this permit, such commencement shall be construed as an acceptance of this permit by said company and of all the conditions therein imposed.

Respondent states that it qualifies under the exception to the fifty-year limitation on War Department permits enacted in 1910 because prior to that time it expended "substantial sums". However, Respondent does not claim that the expenditures were "upon said dam" as the exception requires. Expenditures on the dam, in fact, would have been illegal because the War Department permit was not issued until after the enactment in 1910 of the time limitation. Congress in 1909 consented to the construction of a dam near Stevens Creek, but under the General Dam Act, incorporated by reference in the special legislation, expenditures on the dam could not legally be made until a War Department permit, approving its plans and specifications, had been issued.

As no expenditures upon the dam were authorized prior to July 20, 1910, any expenditure would have been of the nature referred to by Theodore Roosevelt when he vetoed that Rainy River Bill. In that veto message, President Roosevelt stated that the public interest required prompt exercise of the privilege of constructing dams across navigable streams and pointed out the need for fixing terms in permits. 42 Cong. Rec. 4698 (1908). Of the kind of expenditures respondent may have made before the 1910 amendment of the General Dam Act, the President said:

> I do not believe that natural resources should be granted and held in undeveloped condition either for speculation or other reasons. *Ibid.*

The Rainy River veto message is an important part of the legislative history of the 1910 amendment to the General Dam Act. The Representative in charge of the legislation, explaining it in the House, referred to the message and to the fact that afterwards the House agreed with the President that the existing law governing dams should be amended in view of the general considerations which prompted the Rainy River veto. 45 Cong. Rec. 5683 (1910).[1]

Whether expenditures prior to the issuance of a War Department permit would exempt anyone from the 50-year limitation on such permits is purely a question of law. The plain language of the exception and its legislative history clearly indicate that the purchase of land or flowage rights would not exempt a permittee from the fifty-year limitation. An opposite conclusion would put a premium on promotional activity of a type the legislation sought to discourage. It is further to be considered that "all federal grants are construed in favor of the Government lest they be enlarged to include more than what was expressly included". *United States* v. *Grand River Dam Authority*, 363 U.S. 229, 255.

The conclusion that Respondent's War Department permit has expired by its terms is supported by the recent decision in *South Carolina Electric & Gas Co.* v. *F.P.C.*, 338 F. 2d 898 (CA-4). There Respondent's "primary defense" against an assessment for headwater benefits was "denial of the reach of the Act". *Id.* at 901. The Court held that South Carolina's permit issued July 20, 1910 was amenable to the General Dam Act as amended and provided "for a term of 50 years". *Id.* at 901–2.

---

[1] In *United States ex rel. Chapman* v. *F.P.C.*, 345 U.S. 153, 167, the Supreme Court noted this and other veto messages of Presidents Roosevelt and Taft and their significance in the development of national hydroelectric power policy.

The Commission finds:

(1) The Savannah River is a navigable water of the United States.

(2) South Carolina Electric & Gas Company (South Carolina) is a corporation organized under the laws of the State of South Carolina.

(3) Respondent operates and maintains the Stevens Creek hydroelectric project in Georgia and South Carolina on the Savannah River, about 8.7 mile upstream from Augusta, Georgia.

(4) Under the provisions of an Act of Congress approved August 5, 1909 (36 Stat. 180), as extended by the Act of March 5, 1912 (37 Stat. 72), and the General Dam Act of June 23, 1910 (36 Stat. 593), the War Department issued a permit on July 20, 1910 to Respondent's Predecessors.

(5) The permit was amended from time to time and the Stevens Creek project was constructed in 1913–1914.

(6) The fifty-year permit term prescribed by the General Dam Act of 1910 has expired.

(7) Respondent is operating and maintaining the Stevens Creek project works without a valid federal permit issued prior to June 10, 1920 or a license under the Federal Power Act in violation of Section 23(b) of that Act (16 U.S.C. 817).

The Commission orders:

South Carolina Electric & Gas Company shall, within ninety (90) days from the date of issuance of this order, file application for license, pursuant to the provisions of the Federal Power Act and the Commission's Rules and Regulations thereunder, for the continued maintenance and operation of its project works in and along the Savannah River in the vicinity of Stevens Creek.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

ALABAMA ELECTRIC COOPERATIVE, INC. v. ALABAMA POWER COMPANY, DOCKET NO. E–7183

ORDER PRESCRIBING REVISED PROCEDURE, PERMITTING INTERVENTION, DENYING MOTIONS TO DISMISS COMPLAINTS, REQUIRING PRODUCTION OF DATA, AND DENYING APPLICATION FOR REHEARING

(Issued March 19, 1965)

We have before us for consideration in connection with this proceeding: (1) an "Application for Rehearing" filed by the Alabama Power Company (Company) and directed to our order of February 5, 1965, 33 FPC 183, designating the complaint filed against it by Alabama Electric Cooperative, Inc. (Cooperative) for hearing and rejecting Company's motion to dismiss; (2) the examiner's action of March 4, 1965, referring to us an appeal by Company from the examiner's order directing Company to make certain documents available to Cooperative; (3) petitions by the Cities of Troy and Luverne (Cities) filed March 1, 1965 seeking to intervene in this proceeding; moving to dismiss it; and complaining about the rates, charges, terms, and conditions by which Cooperative presently sells power to the Cities. Pursuant to such complaint, Cities seek determinations from the Commission as to whether it has jurisdiction over such sales and, if so, whether Cooperative's rates are excessive and the terms of sale unfair, unjust, unreasonable, burdensome, discriminatory, or preferential.

As indicated below, Company's "Application for Rehearing" (which is being considered as an application for reconsideration since our order of February 5, 1965, was not a final order of the Commission from which rehearing lies (see FPC Rules of Practice and Procedure, § 1.34)) is being denied, as will its appeal from the examiner's ruling. Cities' petitions for intervention are being granted and their motions to dismiss denied. Finally, all further action on Cities' complaints against Cooperative is deferred until the Commission has an opportunity to consider the matters raised therein in the light of Cooperative's answer thereto and any reply which may be timely filed by Cities.

1. We have examined the "Application for Rehearing" filed by Company and the Motions to Dismiss filed by Cities and conclude that they advance nothing which would cause us to reconsider the conclusion reached in our order of February 5, 1965 that Cooperative's complaint against Company should be set for hearing. In so holding, we do not intend to indicate that we necessarily agree with some of the statements by counsel for Cooperative in the course of prehearing conference, referred to in the application for rehearing, suggesting that should Cooperative prevail on the merits of its complaint, we would have authority, in addition to prescribing lawful rates, to enjoin either permanently or temporarily any service by Company to Cities. However, the fact that Cooperative may *inter alia* be seeking relief which we could not or should not afford it, is not grounds for dismissing the complaint in view of the fact that Cooperative also seeks relief by way of the prescription of lawful rates which is clearly within our jurisdiction under the Act.

2. We do not agree with Company or the Cities that the jurisdictional question Company has raised by way of a defense to the Cooperative complaint must or should be finally resolved by the Commission prior to any hearing on the merits of the case. Such a procedure would obviously impose an unnecessary time burden upon parties filing complaints before the Commission. In view of the nature of the issue, we are prepared to have the staff of the Commission assume the burden in the hearing of demonstrating our jurisdiction over the Company's rates in question, but this matter should be tried along with and not separate from the merits of Cooperative's complaint. Nor do we believe that the fact that Company has raised the jurisdictional issue would justify it in refusing to comply with those portions of the Cooperative's request for documents and other information which the examiner (in our opinion correctly) has granted. The appeal from his ruling is therefore denied.

3. Cities' petitions for intervention are not opposed and will be granted. Their complaints against Cooperative, however, present a procedural question. Actual service was apparently made upon Cooperative on March 1, 1965 but the Secretary of the Commission did not serve copies of the complaints upon Cooperative, as contemplated by Section 1.17 of our Rules of Practice and Procedure until March 8, 1965. While Cooperative, in its "Answer to Petitions to Intervene," filed March 8, adverts briefly to the complaints, contending that they are "notably lacking in merit", it has not yet had an opportunity to answer the complaints in any detail. Our rules contemplate that parties complained of will have 30 days from the date of service in which to file their answers unless the Commission, for cause, prescribes a lesser period. In view of the circumstances, we believe that Cooperative should be given an opportunity to respond fully to the complaints before we take any action thereon, and we think a period of 30 days from March 1, 1965—the date upon which the pleading containing the complaint was served by Cities upon Cooperative—would be adequate for this purpose.

On the basis of this answer, plus any reply the Cities may wish to file within 15 days from the filing of such answer, we shall determine what action is appropriate with respect to the Cities' complaints. We recognize that at such time we may wish to consolidate any hearing on the Cities' complaints with the instant proceeding, but we do not believe that this possibility should presently lead to postponement of the instant proceeding.

There remains for consideration the question of setting a new date for the commencement of the hearing in this proceeding. The hearing had originally been set to begin on March 16, 1965, but in view of the pendency of these various motions, the Secretary, at our direction, on March 15, 1965, postponed the hearing date pending our further order. We believe that the examiner is in the best position to determine the earliest practical date at which the hearing can be started, bearing in mind the ultimate objective of completing this proceeding as expeditiously as possible. We shall, therefore, direct him to call a further prehearing conference at the earliest convenience of the parties and to fix therein such dates for filing of testimony and oral examination of witnesses as he may determine will best achieve these objectives.

The Commission orders:

(A) The Cities of Troy and Luverne, Alabama, are hereby permitted to intervene in this proceeding subject to the Rules and Regulations of the Commission; *Provided, however*, That their participation shall be limited to matters affecting asserted rights and interests as specifically set forth in their petitions; and, *Provided, further*, That the admission of said Cities as intervenors shall not be construed as recognition by the Commission that said Cities might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(B) The application filed by the Company for reconsideration of the Commission's order issued February 5, 1965, in this proceeding, and the petitions filed by the Cities of Troy and Luverne on March 1, 1965, insofar as they seek dismissal of this proceeding at this time are hereby denied.

(C) Company shall furnish data to Cooperative in accordance with the presiding examiner's rulings as referred to above.

(D) Cooperative shall have until March 31, 1965 to answer the complaints filed against it by the Cities of Troy and Luverne, and the Cities may reply to such answer on or before April 15, 1965.

(E) The examiner is directed to forthwith convene a further prehearing conference in this proceeding and to fix thereat the schedule for subsequent filing of testimony and oral examination of witnesses by the several parties.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP65-166

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 22, 1965)

On December 10, 1964, Cities Service Gas Company (Applicant) filed in Docket No. CP65-166 an application pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(c) of the Commission's Regulations under the Act, for a certificate of public convenience and necessity authorizing the construction during the calendar year 1965 and the operation of natural gas facilities for the sale of natural gas to direct customers and for miscellaneous rearrangements not resulting in any change of service rendered by means of the facilities involved, all as more fully set forth in the application in this proceeding.

Applicant proposes to construct lateral and loop lines, taps, metering and regulating equipment, structures and other facilities necessary for the measurement and delivery of natural gas to direct consumers who will use the gas solely for road building, irrigation, agriculture, general use in school and hospitals located in areas outside of local distributors' franchise areas and for seasonal industrial purposes. Applicant states that it will construct a maximum of 60 lateral and loop lines with maximum lengths of five miles each and maximum diameters of six inches for service to the direct consumers. Further, Applicant states that miscellaneous rearrangement facilities proposed herein will not exceed thirty separate projects, which projects include the alteration and relocation of miscellaneous gas transmission facilities required in connection with highway construction, dam or reservoir construction, industrial plant expansion, development of private property and other similar projects.

The proposed facilities will not be used for deliveries to any one consumer exceeding 100,000 Mcf annually, and the gas so delivered will not be used by any consumer for boiler fuel purposes.

The total estimated cost of the proposed facilities is not to exceed $300,000 and will be financed with treasury cash.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 19, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G-298 (4 FPC 471).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and delivery of natural gas in interstate commerce and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(6) The authorization hereinafter granted should be limited to construction during the calendar year 1965 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $300,000, with the total deliveries to any one customer not to exceed a maximum of 100,000 Mcf of natural gas per year.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with subparagraph (8) of Section 157.7(c) of the Commission's Regulations under the Natural Gas Act.

(8) The certificate issued hereinafter should be conditioned upon Applicant's compliance with the provisions of subparagraph (7) of the aforesaid Regulations.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Cities Service Gas Company, to construct during the calendar year 1965 the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities to sell natural gas to direct customers and as proposed for miscellaneous rearrangements, all as hereinafter provided.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(C) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1965 and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $300,000, with the total deliveries to any one customer limited to a maximum of 100,000 Mcf of natural gas per year.

(D) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with subparagraph (8) of Section 157.7(c) of the Commission's Regulations under the Natural Gas Act.

(E) The certificate issued by paragraph (A) above is expressly conditioned upon Applicant's compliance with the provisions of subparagraph (7) of Section 157.7(c) of the aforesaid Regulations and, further, shall not entitle any industrial customer to whom firm deliveries are authorized herein to any priorities or rights to additional gas for meeting any future increases in their requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

HOPE NATURAL GAS COMPANY, DOCKET NO. CP63-272

ORDER DENYING APPLICATION FOR REHEARING

(Issued March 22, 1965)

On March 1, 1965, the cities of Canton, Cleveland and Massillon, Ohio (Cities), interveners in the above-captioned proceeding, filed a joint application for rehearing of the Commission's Opinion No. 448 and order issued February 2, 1965, 33 FPC 150. The Cities argue that the Commission erred in its approval of the certificate for the merger of Hope Natural Gas Company and New York State Natural Gas Company, and in its allowance of the interim accounting procedure with regard to the computation of purchased gas costs under the OSS Rate

Schedule of New York Natural. The Cities request, in essence, that upon due reconsideration of our opinion we vacate the order as therein issued and enter an order denying the certificate as not being required by the public convenience and necessity.

We have considered the assignments of error and grounds for rehearing set forth in the application and have reconsidered our Opinion No. 448. The arguments advanced here by the Cities are similar, if not identical, to those advanced by them in their brief before the examiner and in their exceptions and rejected by us in the opinion. All points raised in the application have been discussed in the opinion. Our conclusions as to these matters remain unchanged. No new facts or arguments are called to our attention which would be cause for granting rehearing or disturbing the original opinion and order.

The Commission finds:

The assignments of error and grounds for rehearing set forth in the application for rehearing filed in this proceeding present no facts or legal principles which would warrant any change or modification in the Commission's Opinion No. 448 and accompanying Order.

The Commission orders:

The application for rehearing filed by the cities of Canton, Cleveland, and Massillon, Ohio, on March 1, 1965, is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

COLUMBIA GULF TRANSMISSION COMPANY, DOCKET NO. CP65-203

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued March 23, 1965)

On January 4, 1965, Columbia Gulf Transmission Company (Applicant) filed in Docket No. CP65-203 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon in place 4.65 miles of 2-inch to 6-inch field lines and appurtenant equipment in the State of Louisiana, all as more fully set forth in the application.

The facilities proposed to be abandoned are as follows:

Field	Parish	Producer	Lines to be abandoned
Franklin	St. Mary	Ted Weiner	0.95 mile of 4-inch.
Savoy	St. Landry	Gulf Interstate Oil Co.	1.96 miles of 2-inch.
Savoy	St. Landry	Tidewater Oil Co.	1.477 miles of 4-inch.
Second Bayou	Cameron	Perry E. Bass, *et al*	0.262 mile of 6-inch.

The subject lines and equipment were originally constructed to enable Applicant to take gas for the account of United Fuel Gas Company (United) from the above-described properties. Abandonment is necessary because production has ceased, and the reservoirs of the wells connected to the gas purchase facilities are fully depleted.

Applicant states that the cost of salvaging is too great to justify an attempt to take up the pipe and sell it.

All of the independent producers involved have been granted permission and approval to abandon service, except Ted Weiner who never commenced regular production.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 19, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Columbia Gulf Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 5, 1958, in Docket No. G–15524 (20 FPC 681).

(2) The facilities to be abandoned, as hereinbefore described and as more fully described in the application in this proceeding, are subject to the jurisdiction of the Commission and abandonment of such facilities by Applicant is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) Such abandonment in place, as hereinbefore described and as more fully described in the application in this proceeding, is permitted by the public convenience and necessity and an order approving same should be issued as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment by Columbia Gulf Transmission Company of the facilities hereinbefore described, as more fully described in the application in this proceeding, be and the same are hereby granted.

(B) Applicant shall advise the Commission of the date of abandonment of the facilities within 10 days thereafter.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP63–296

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 23, 1965)

On January 13, 1965, El Paso Natural Gas Company (Applicant) filed in Docket No. CP63–296 an application to amend the order of the Commission issued in said docket on December 16, 1963, 30 FPC 1520, as amended on July 29, 1964, 32 FPC 423, which order authorized Applicant to sell a total of 100,000 Mcf of natural gas per day to Southern California Gas Company and Southern Counties Gas Company of California (jointly Southern) in addition to Southern's 1,130,000 Mcf of maximum contract daily demand. The sale was authorized on a limited-term basis, continuing until November 1, 1965, or until commencement of any new service which results from an order in *Transwestern Pipeline Company, et al.*, whichever is earlier.

In the present application, Applicant seeks amendment of the order issued December 16, 1963, as amended July 29, 1964, in Docket No. CP63–296 by requesting extension of the term of the sale of up to only 70,000 Mcf of gas per day to Southern for one year, until November 1, 1966, or until commencement of any new service which results from an order in *Transwestern Pipeline Company, et al.*, Docket No. CP63-204, *et al.*, whichever is earlier.

Due notice of the filing of the petition to amend and opportunity for hearing thereon has been given by publication in the Federal Register on January 27, 1965 (30 F.R. 853). No protest or petition to intervene or request for hearing has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission order issued December 16, 1963, as amended July 29, 1964, in Docket No. CP63-296 be further amended as hereinafter ordered.

The Commission orders:

(A) The certificate of convenience and necessity issued to El Paso in the Commission order of December 16, 1963, as amended July 29, 1964, be and the same is hereby further amended by extending the term of the sale of up to only 70,000 Mcf of gas per day to Southern until November 1, 1966, or until commencement of any new service pursuant to an order in *Transwestern Pipeline Company, et. al.*, Docket No. CP63-204, *et al.*, whichever is earlier, as hereinbefore described and as more particularly described in the aforementioned petition which is on file with the Commission.

(B) In all other respects the order, as amended in Docket No. CP63-296 shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CITY OF HOLYOKE GAS & ELECTRIC DEPARTMENT, PROJECT NO. 2386

ORDER ISSUING LICENSE (MINOR)

(Issued March 23, 1965)*

Application was filed on July 5, 1963 by the City of Holyoke Gas & Electric Department (Applicant) for a license under Section 4(e) of the Federal Power Act (Act) for constructed Project No. 2386, known as Power Project No. 1, located on a canal system along the Connecticut River within the City of Holyoke in Hampden County, Massachusetts.

Power Project No. 1 was acquired by Applicant in 1902. The four generating units were installed in 1923 to replace the original installation made in 1893.

The canal system upon which Power Project No. 1 is situated takes water from the Connecticut River, a navigable water of the United States, and discharges the water back into the Connecticut River at a point downstream. On July 5, 1949, the Commission issued a license to the Holyoke Water Power Company for Project No. 2004 which included therein the canal system as a part of the project works, but not the hydroelectric facilities owned by others and located along the canal system.[1] No lands of the United States are affected by the project.

---

*Rehearing granted by order issued May 10, 1965, unreported.

[1] Article 16 of the license for Project No. 2004, provides:

Article 16. The Licensee shall follow a plan of operation which will result in a maximum economic utilization of the water of the Connecticut River at Holyoke, Massachusetts, through the facilities along the existing canals and through the new power plant covered by this license, consistent with the use of water for process and other essential purposes.

The Secretary of the Army and the Chief of Engineers have reported that the plans of the project structures affecting navigation are satisfactory insofar as the interests of navigation are concerned.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project, certain conditions in the interests of fish and wildlife and recreation.

The Department of Health, Education, and Welfare has advised of a need for a detailed study of the area affected by the project and will report further upon completion of the study. However, on September 15, 1964, the Department advised that such a report would not be forthcoming for perhaps a year or so.

In accordance with the criteria set forth in our April 25, 1962 Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date as of March 1, 1941 and a terminating date of February 28, 1991.[2]

Pursuant to petition therefor, the Commission, by order issued January 26, 1965, permitted Holyoke Water Power Company, of Holyoke, Massachusetts, to intervene in this proceeding.

The Commission finds:

(1) The project affects navigable waters of the United States.

(2) Applicant is a municipal corporation organized under the laws of the Commonwealth of Massachusetts and a municipality, as defined by Section 3(7) of the Act, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. No protests or petitions to intervene in opposition to the project have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 1408 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(7) It will be in the public interest to waive pursuant to Section 10(i) of the Act the terms and conditions contained in the following sections of Part I of the Act:

Section 4(b), except the second sentence thereof; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the act which are hereinafter waived; 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 15; 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

---

[2] On March 4, 1941, in Bellows Falls Hydro-Electric Corporation, *et al.* (2 FPC 380, 387), the Commission determined the Connecticut River to be a navigable water of the United States from its mouth up to and beyond Bellows Falls, Vermont.

The Commission orders:

(A) This license is hereby issued to the City of Holyoke Gas & Electric Department under Sections 4(e) and 10(i) of the Act for a period effective as of March 1, 1941 and terminating February 28, 1991, for the continued operation and maintenance of Project No. 2386, located on the canal system of the Holyoke Water Power Company which takes water from the Connecticut River, a navigable water of the United States, subject to the terms and conditions of the Act not expressly waived herein, which Act is hereby incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2386 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined;

(ii) project works consisting of: a brick powerhouse (38 feet x 50 feet in plan) containing two 330 hp turbines connected to two 240 kw vertical hydro generators and two 400 hp turbines connected to two 288 kw vertical hydro generators—all having a total capacity of 1056 kw at a 19 foot head; and two 32 foot long (10 foot diameter) steel penstocks and two 320 foot long brick tailraces.

(iii) all other structures, fixtures, equipment, or facilities which are located in the project area and are used or useful in the maintenance and operation of the project; and all rights and interests the possession of which are necessary or appropriate to the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-9 (July 1, 1964) entitled, "Terms and Conditions of License for Constructed Minor Project Affecting Navigable Waters of the United States" (32 FPC 577), which terms and conditions, designated as Articles 1 through 11, are attached hereto and made a part hereof; and subject to the following special conditions set forth herein as additional articles:

Article 12. The Licensee shall pay to the United States the following annual charge:

(i) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act for the period March 1, 1941 through March 31, 1962 an annual charge of $5.00, and effective April 1, 1962 an annual charge of $70.00.

Article 13. The Licensee (City of Holyoke Gas & Electric Department) shall cooperate with the Licensee for Project No. 2004 (Holyoke Water Power Company) in order that the conditions of Article 16 of the license for Project No. 2004 can be fulfilled.

(D) The terms and conditions of the Act, which it has been found above to be in the public interest to waive, are hereby excluded from this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CITY OF HOLYOKE GAS & ELECTRIC DEPARTMENT, PROJECT NO. 2388

ORDER ISSUING LICENSE (MINOR)

(Issued March 23, 1965)*

Application was filed on July 5, 1963, by City of Holyoke Gas & Electric Department (Applicant) for a license under Section 4(e) of the Federal Power Act (Act) for constructed Project No. 2388, known as Power Project No. 3, located on a canal system within the City of Holyoke, in Hampden County, Massachusetts.

Power Project No. 3 was completed in June, 1940.

The canal system upon which Power Project No. 3 is situated takes water from the Connecticut River, a navigable water of the United States, and discharges the water back into the Connecticut River at a point downstream. On July 5, 1949, the Commission issued a license to the Holyoke Water Power Company for Project No. 2004, which included therein the canal system as part of the project works, but not the hydroelectric facilities owned by others and located along the canal system.[1] No lands of the United States are affected by the project.

The Department of the Army and the Chief of Engineers have reported that plans of the project structures affecting navigation are satisfactory insofar as the interests of navigation are concerned.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project certain conditions in the interests of fish and wildlife and recreation.

The Department of Health, Education, and Welfare has advised of a need for a detailed study of the area affected by the project and would report further upon completion of the study. However, on September 15, 1964, the Department advised that such a report would not be forthcoming for perhaps a year or so.

In accordance with the criteria set forth in our April 25, 1962 Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of June 1, 1940, and a terminating date of May 31, 1990.

Pursuant to petition therefor, the Commission, by order issued January 26, 1965, permitted Holyoke Water Power Company, of Holyoke, Massachusetts, to intervene in this proceeding.

The Commission finds:

(1) The project affects navigable waters of the United States.

(2) Applicant is a municipal corporation organized under the laws of the Commonwealth of Massachusetts and a municipality, as defined by Section 3(7) of the Act and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. No protests or petitions to intervene in opposition to the project have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any

---

*Rehearing granted by order issued May 10, 1965, unreported.

[1] Article 16 of the license for Project No. 2004, provides:

Article 16. The Licensee shall follow a plan of operation which will result in a maximum economic utilization of the water of the Connecticut River at Holyoke, Massachusetts, through the facilities along the existing canals and through the new power plant covered by this license, consistent with the use of water for process and other essential purposes.

water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 600 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable.

(7) It will be in the public interest to waive pursuant to Section 10(i) of the Act the terms and conditions contained in the following sections of Part I of the Act:

Section 4(b), except the second sentence thereof; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 15; 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

The Commission orders:

(A) This license is hereby issued to the City of Holyoke Gas & Electric Department under Sections 4(e) and 10(i) of the Act for a period effective as of June 1, 1940, and terminating May 31, 1990, for the continued operation and maintenance of Project No. 2388, located on the canal system of the Holyoke Water Power Company which takes water from the Connecticut River, a navigable water of the United States, subject to the terms and conditions of the Act not expressly waived herein, which Act is hereby incorporated herein by reference as a part of this license, and subject to such rules and regulations as the commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2388 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined;

(ii) project works consisting of: a brick powerhouse (32 feet by 43 feet in plan) containing a 746 hp turbine connected to a vertical hydro generator rated at 450 kw and operating under a 12.5 foot head; two 11-foot by 7 foot brick penstocks, 80 feet in length; and a 30 foot wide by 94 foot long open tailrace; and

(iii) all other structures, fixtures, equipment, or facilities which are located in the project area and are used or useful in the maintenance and operation of the project: and all rights and interests the possession of which are necessary or appropriate to the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-9 (July 1, 1964) entitled "Terms and Conditions of License for Constructed Minor Project Affecting Navigable Waters of the United States" (32 FPC 577), which terms and conditions, designated as Articles 1 through 11, are attached hereto, and made a part hereof; and subject to the following special conditions set forth herein as additional articles:

Article 12. The Licensee shall pay to the United States the following annual charge:

(i) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act for the period June 1, 1940 through March

31, 1962 an annual charge of $5.00, and effective April 1, 1962 an annual charge of $30.00.

Article 13. The Licensee (City of Holyoke Gas & Electric Department) shall cooperate with the Licensee for Project No. 2004 (Holyoke Water Power Company) in order that the conditions of Article 16 of the license for Project No. 2004 can be fulfilled.

(D) The terms and conditions of the Act which it has been found above to be in the public interest to waive, are hereby excluded from this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

THE MANUFACTURERS LIGHT AND HEAT COMPANY, CUMBERLAND AND ALLEGHENY GAS COMPANY, TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. CP64–244

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 23, 1965)

On April 16, 1964, The Manufacturers Light and Heat Company (Manufacturers), Cumberland and Allegheny Gas Company (Cumberland), and Texas Eastern Transmission Corporation (Texas Eastern) (Applicants) filed in Docket No. CP64–244 a joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange and delivery of natural gas, all as more fully set forth in the application on file with the Commission.

The application states that to the extent operating conditions of Manufacturers and Cumberland will reasonably permit, Texas Eastern will deliver to Cumberland in Garrett County, Maryland, for redelivery by Cumberland to Manufacturers at the Maryland-Pennsylvania state line such quantities of natural gas as Texas Eastern may have available in Garrett County, Maryland, up to a maximum daily quantity of 5,000 Mcf, in exchange for equivalent reductions in takes by Manufacturers at presently established points of delivery between Texas Eastern and Manufacturers. In addition, Manufacturers will, at a later date, deliver to Cumberland at the Maryland-Pennsylvania state line for the account of Texas Eastern to be delivered by Cumberland to Texas Eastern in Garrett County, Maryland, such daily volumes of natural gas requested by Texas Eastern as may at that time be in excess of the requirements of Manufacturers to meet its system obligations, up to a maximum daily quantity of 5,000 Mcf. Texas Eastern will return equal volumes of natural gas to Manufacturers at presently established points of delivery between Texas Eastern and Manufacturers. The term of this proposed exchange is one year, commencing May 1, 1964.

The application states that no new facilities will be required for the project.

Temporary authorization for the joint proposal was granted by Commission letter order dated April 24, 1964.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 19, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, The Manufacturers Light and Heat Company, a Pennsylvania corporation having its principal place of business in Pittsburgh, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 20, 1944, in Docket No. G–593, *et al.*, (4 FPC 821).

(2) Applicant, Cumberland and Allegheny Gas Company, a West Virginia corporation having its principal place of business in Pittsburgh, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued January 5, 1944, in Docket No. G–387 (4 FPC 472).

(3) Applicant, Texas Eastern Transmission Corporation, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 30, 1949, in Docket No. G–1089 (8 FPC 228).

(4) The proposed exchange and delivery of natural gas between the Applicants, in interstate commerce, as hereinbefore described and as more fully described in the applications and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) The aforesaid proposed exchange and delivery of natural gas are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Applicants are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the rules, regulations and requirements of the Commission thereunder.

(7) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder be conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to the Applicants in this proceeding jointly, authorizing the exchange and delivery of natural gas in interstate commerce as hereinbefore described, as more fully described in the application and exhibits in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder is hereby conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

MIDWESTERN GAS TRANSMISSION COMPANY, DOCKET NO. CP65-48

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 23, 1965)

On August 14, 1964, Midwestern Gas Transmission Company (Applicant) filed in Docket No. CP65-48 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the utilization of Applicant's existing interconnection with Northern Natural Gas Company (Northern) in Chisago County, Minnesota, for the sale of natural gas, on an interruptible basis, to Northern until December 31, 1965, all as more fully set forth in the application in this proceeding .

No additional facilities will be required to make the proposed sale, which will be made under Applicant's presently effective FPC Gas Rate Schedule I-2, at a price of 24.92 cents per Mcf. The deliveries will be made when Applicant has gas available in excess of its existing customers' requirements and when at the same time Northern is able to take gas from Applicant. Under the proposal, Applicant is not obligated to sell and Northern is not obligated to purchase.

The application indicates that Northern plans to purchase 5,255,200 Mcf of interruptible gas from Applicant. Northern will inject 2,840,000 Mcf of this gas into its Vincent Storage Field by displacement and the remaining 2,415,200 Mcf will be resold in its Zones B and C as designated in Northern's tariff.

For the following reasons it appears that the subject proposal will be beneficial to both Northern and its customers:

(1) The portion of this gas injected into Vincent Storage Field by displacement will result in earlier development of storage inventory for future firm requirements on Northern's system;

(2) The estimated injection into Vincent Storage Field as well as the additional sales in Zones B and C will not result in cutbacks in Northern's present gas supplies;

(3) No new facilities are to be constructed. Northern will receive this gas at a point within 175 miles of the downstream end of its system at times when upstream capacity is fully utilized;

(4) The downstream supply of gas as proposed herein will give Northern added flexibility in operating its system;

(5) The additional 2,415,200 Mcf made available to eleven of its resale customers will result in additional revenues of $101,720 to such customers. The "additional revenues" represent the difference between the distributor's retail rates and wholesale rates of Northern, and

(6) The resale portion of the gas will result in revenues to Northern in excess of the cost of gas of approximately $11,500 annually.

We had before us in the proceeding in Docket No. CP61-303 a similar proposal involving Applicant and Northern. In that proceeding, Applicant sought to amend its certificate issued in Docket No. CP61-303 to authorize interruptible sales to Northern at the existing Chisago County interconnection. However, by our Opinion No. 400 and order issued August 13, 1963, 30 FPC 469 in said docket, we denied authorization for the proposed sale. Our denial was based upon the finding that Applicant had not sustained its burden of proof rather than upon any finding that the proposal was contrary to the public interest. At that time it appeared to us that (a) the gas to be purchased from Applicant could conceivably replace cheaper gas available to Northern (from the Hugoton area) and that the latter was experiencing difficulty in taking all of this cheaper gas, and (b) based on the then effective rates of Applicant and Northern, it seemed likely that Northern would incur a loss of $34,000, based on the proposed purchase price and the price at which it was to be resold.

For the following reasons, it now appears that circumstances have changed to the point where these objections are no longer appropriate:

(1) Northern's purchase of gas from Applicant, and the resulting equivalent sales in its rate Zones B and C, will be solely for the purpose of making overrun gas available to its customers when its system south of Farmington Compressor Station (near Minneapolis-St. Paul) is fully loaded and such overrun gas would otherwise be curtailed. With the system south of Farmington operating at its full capability, Northern could not transport more of its cheaper Hugoton gas to Zones B and C for use as overrun. Absent the purchases from Applicant, it would be required to curtail such deliveries. With the purchases from Applicant, Northern could provide more overrun gas to its customers during periods of maximum demand when its own system could not supply any additional gas for overrun use. Thus, the purchases from Applicant would not replace, but merely supplement Northern's cheaper Hugoton gas, while furnishing its customers the benefits of overrun gas at the time of greatest need for such gas, and

(2) Subsequent rate reductions by Applicant have brought its proposed rate to Northern below the latter's charge to its Zones B and C customers. Instead of operating at a loss, Northern will realize a profit of approximately $11,500.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 19, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Midwestern Gas Transmission Company, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued May 12, 1959, in Docket No. G-16841 (21 FPC 653).

(2) The proposed transportation and sale of natural gas by Applicant hereinbefore described, as more fully described in the application in this proceeding, will be in interstate commerce, subject to the jurisdiction of the Commission, and such proposed transportation and sale are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed transportation and sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c) (3) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Midwestern Gas Transmission Company, to transport and sell natural gas, on an interruptible basis, during the period ending December 31, 1965, as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(3) and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP65–226

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 23, 1965)

On January 26, 1965, Natural Gas Pipeline Company of America (Applicant) filed in Docket No. CP65–226 an application pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(d) of the Regulations under the Act, for a certificate of public convenience and necessity authorizing Applicant, during the three calendar years 1965 through 1967, to construct and operate natural gas pipeline facilities and compression facilities for the testing and development of underground reservoirs, for the possible storage of natural gas, located on lands adjacent to Applicant's pipeline system within the general areas of its markets, all as more fully set forth in the application in this proceeding.

Applicant states in this "budget-type" application (1) that the volume of natural gas to be injected into the prospective storage fields will not exceed a total of 10,000,000 Mcf with not more than 2,000,000 Mcf being injected into any single reservoir; (2) that the gas will be injected for testing purposes only during off-peak periods; (3) that any storage field developed pursuant to authorization received in this docket will not be utilized to render service without further authorization of the Commission, and (4) the total expenditure for the three-year period will not exceed $3,000,000 with not more than $1,000,000 being spent for any one calendar year period.

On February 15, 1965, the State Corporation Commission of the State of Kansas filed a notice of intervention in this proceeding; however, on February 23, 1965, said notice was withdrawn.

After due notice, no petition to intervene, other notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 19, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-

gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 13, 1942, in Docket No. G–235 (3 FPC 830).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(6) The certificate issued hereinafter should be conditioned upon Applicant's compliance with the provisions of Subparagraphs (1), (2), (3), (4) and (5) of Section 157.7(d) of the Commission's Regulations under the Natural Gas Act.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit the information required by Subparagraphs (6) and (7) of Section 157.7(d) of the aforesaid Regulations.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Natural Gas Pipeline Company of America, during the three calendar years 1965 through 1967, to construct and operate the proposed facilities for the testing and development of underground reservoirs for the storage of natural gas as hereinbefore described, all as more fully described in the application in this proceeding and as hereinafter provided.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(C) The certificate issued by paragraph (A) above is hereby conditioned upon Applicant's compliance with the provisions of Subparagraphs (1), (2), (3), (4) and (5) of Section 157.7(d) of the Commission's Regulations under the Natural Gas Act.

(D) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant shall submit the information required by Subparagraphs (6) and (7) of Section 157.7(d) of the aforesaid Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

VALLEY GAS TRANSMISSION, INC., DOCKET NO. CI62-124[1]: RICHARD M. FINDER, D/B/A TEXKAN OIL COMPANY (OPERATOR), ET. AL. DOCKET NO. CI61-1043

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 23, 1965)

On August 3, 1961, Valley Gas Transmission, Inc. (Valley Gas), filed in Docket No. CI62-124, an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Texkan Oil Company (Texkan) and the delivery thereof to Tennessee Gas Transmission Company (Tennessee Gas) in Brooks and Jim Wells Counties, Texas, all as more fully set forth in the application.

On January 13, 1961, as supplemented on June 7, 1961, Richard M. Finder, d/b/a Texkan Oil Company (Operator), *et al.*, (Texkan) filed in Docket No. CI61-1043, an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas to Tennessee Gas Transmission Company from production in the East Alice Field, Jim Wells County, and delivered to Tennessee in said County, at a price of 15.09520 cents per Mcf at 14.65 psia, all as more fully set forth in the application and supplement thereto.

Valley Gas proposes to transport for Texkan 30,000 Mcf of natural gas, monthly, produced in Jim Wells County, and 30,000 Mcf per month of gas produced in Brooks County, all in Texas, to points of delivery on the system of Tennessee Gas in said counties. Valley Gas proposes to charge Texkan 2.0 and 3.0 cents per Mcf for gas deliveries from Jim Wells County, and Brooks County, respectively. No new facilities will be required.

Temporary authorizations were issued by the Commission to Valley Gas and Texkan on October 9, 1961.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the applications has been filed.

At a hearing held on March 19, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications and the supplement thereto of Texkan and exhibits submitted in support of the authorization, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Valley Gas Transmission, Inc., a Texas corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act.

(2) Richard M. Finder, d/b/a Texkan Oil Company (Operator), *et al.*, an independent producer of natural gas, is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption subject to the jurisdiction of the Commission, and is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(3) The proposed transportation of natural gas by Valley Gas of Texkan and delivery thereof to Tennessee Gas in Brooks and Jim Wells Counties, Texas, as hereinbefore described, and as more fully described in the applications and supplement thereto and exhibits in these proceedings, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

---

[1] Valley Gas was determined to be an interstate pipeline in Docket No. CI60-542 by order of Commission issued July 27, 1962, 28 FPC 237.

(4) The sale of natural gas by Texkan to Tennessee Gas hereinbefore described, and as more fully described in Texkan's application in Docket No. CI61–1043 will be made in interstate commerce, subject to the jurisdiction of the Commission and such sale by Texkan, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) The sale of natural gas by Texkan, together with the construction and operation of any facilities, subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) The aforesaid proposed transportation and delivery of natural gas by Valley Gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(7) Valley Gas and Texkan are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(8) Public convenience and necessity require that the certificate issued hereinafter to Valley Gas and the rights granted thereunder be conditioned upon Valley Gas' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Valley Gas in Docket No. CI62–124 authorizing the transportation and delivery of natural gas to Tennessee Gas, as more fully described in the application and exhibits in the proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Valley Gas' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) A certificate of public convenience and necessity be and the same is hereby issued upon the terms and conditions of this order, authorizing the sale by Texkan of natural gas in interstate commerce for resale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission used for the sale of natural gas in interstate commerce, to Tennessee Gas, as hereinbefore described and as more fully described in the application and supplement thereto filed in Docket No. CI61–1043.

(D) The certificate hereby issued to Texkan in paragraph (C) above is not transferable and shall be effective only so long as Texkan continues the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act, and the applicable rules, regulations and orders of the Commission.

(E) The grant of the certificates issued in paragraph (C) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Applicant. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contracts herein involved. Nor shall the grant of the certificate aforesaid for service to the particular customer involved imply approval of all of the terms of the respective contracts, particularly as to the cessation of service upon termination of said contracts, as provided by Section 7(b) of the Natural Gas Act. Nor shall the grant of the certificates aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sales of natural gas subject to said certificates.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TOWN OF WAYLAND, IOWA, DOCKET NO. CP64-295

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued March 23, 1965)

On June 10, 1964, the town of Wayland, Iowa (Applicant), filed an application, pursuant to Section 7(a) of the Natural Gas Act, for an order of the Commission directing Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) to establish physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant, and to sell and deliver to Applicant natural gas for resale in said town. Supplements to such application were filed by Applicant on October 16, and December 8, 1964.

Applicant proposes to construct and operate a natural gas distribution system in Wayland, Iowa, at a cost of approximately $229,460. The system is to be financed by the sale of gas revenue bonds not to exceed $248,000. The sale of such gas revenue bonds was approved by an election held on April 19, 1964.

Michigan Wisconsin filed an answer to the application on July 17, 1964 and supplements thereto on November 25, 1964 and January 6, 1965.

Pursuant to due notice a hearing on the application was held on March 3 and 4, 1965.

At the hearing, Applicant presented testimony indicating its third year peak day and annual requirements to be 710 Mcf and 80,590 Mcf, respectively. Assuming the validity of the third year annual requirement figure, Michigan Wisconsin, on the basis of its so-called "10-cent formula," would have been required to construct 2.51 miles of line at a cost to it of $53,970. The total length of the lateral required to deliver natural gas is approximately 12.7 miles.

Testimony presented by Michigan Wisconsin indicated the third year total annual requirements of Wayland would be approximately 63,806 Mcf. Assuming the validity of this estimate, Michigan Wisconsin under the so-called "10-cent formula" would be required to construct 2.1 miles of pipeline at a cost to it of $42,850.

Following the presentation of Michigan Wisconsin's testimony, counsel for Applicant stated that for purposes of this proceeding Applicant was willing to accept Michigan Wisconsin's basis for providing service, including a reduction in peak day requirements from 710 Mcf to 600 Mcf.

As a result of the agreement between the parties and the change with respect to the length of line Michigan Wisconsin would be required to construct, the cost of the project to Applicant would be increased from $229,460 to $233,080.

The evidence shows that even by using the agreed upon annual sales requirements, Applicant's debt service coverage would be 1.64 based upon 25 years of operation.

Counsel for Applicant moved orally at the hearing that the intermediate decision procedure be omitted and the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) The town of Wayland, Iowa is a municipal corporation and is legally authorized to construct, own and operate a local gas distribution system.

(2) Michigan Wisconsin Pipe Line Company, a Delaware corporation having its principal place of business in Detroit, Michigan, is a "natural gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 30, 1946 in Docket No. G–669 (5 FPC 953).

(3) It is necessary and desirable in the public interest that the Commission, by order, direct Michigan Wisconsin Pipe Line Company to establish physical connection of its transportation facilities with the facilities proposed to be constructed by the town of Wayland, Iowa and to sell and deliver to Wayland a maximum volume of 600 Mcf of natural gas per day for resale and distribution in said community.

(4) The extent of the required lateral to be constructed by Michigan Wisconsin Pipe Line Company in order to render service to the town of Wayland, Iowa, as set forth in paragraph (3) *supra* should be determined by Michigan Wisconsin's 10-cent formula as heretofore approved by the Commission, and which the evidence shows to be 2.1 miles of 4½ inch O.D. pipeline.

(5) The requirement that Michigan Wisconsin serve Applicant as above set forth will not place any undue burden upon it nor require it to enlarge its facilities, nor impair its ability to render adequate service to its existing customers.

(6) A request having been made by counsel for Applicant for omission of the intermediate decision procedure and all requirements of the provisions of Section 1.30(c)(1) [18 CFR 1.30(c)(1)] of the Commission's Rules of Practice and Procedure having been satisfied, sufficient cause exists for the Commission forthwith to render its final decision in the instant proceeding.

The Commission orders:

(A) Michigan Wisconsin Pipe Line Company be and the same is hereby directed to establish physical connection of its transportation facilities with the facilities proposed to be constructed by the town of Wayland, Iowa, and to sell and deliver a maximum volume of 600 Mcf of natural gas per day to Wayland for resale and distribution in said community.

(B) Michigan Wisconsin Pipe Line Company shall apply its "10-cent formula," as heretofore approved by the Commission, in order to determine the amount of expenditures to be made by it for the cost of the transportation facilities necessary to render service to the town of Wayland, Iowa, which will require it to construct 2.1 miles of 4½ inch O.D. pipeline.

(C) The town of Wayland, Iowa shall be prepared to receive natural gas service from Michigan Wisconsin Pipe Line Company within one year from the date of issuance of this order.

(D) Michigan Wisconsin Pipe Line Company shall report to the Commission in writing the date of commencement of service to said town of Wayland, Iowa.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

COLORADO INTERSTATE GAS COMPANY, DOCKET NO. CP65-200; NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP65-219

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND ACCEPTING TARIFF FILINGS

(Issued March 24, 1965)

On December 31, 1964, Colorado Interstate Gas Company (Colorado) filed in Docket No. CP65-200 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities and the short-term sale of natural gas, all as more fully set forth in the application on file with the Commission.

On January 18, 1965, Northern Natural Gas Company (Northern) filed in Docket No. CP65-219 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and the exchange of natural gas with Colorado, all as more fully set forth in the application on file with the Commission.

Colorado proposes to make a two-year, short-term sale to Cabot Corporation (Cabot) of an estimated annual volume of 9,125,000 Mcf of natural gas at a price of 15.75¢ per Mcf, to be delivered to Cabot by Northern for Colorado's account. The gas will be used by Cabot in carbon black operations. Deliveries are to take place at three separate points of interconnection between Cabot's system and Northern's system in Carson and Gray Counties, Texas, to be constructed, operated, and maintained at Cabot's expense.

The application states that Colorado has agreed to redeliver a like volume of gas to Northern at the present interconnection between Colorado's gathering system and Northern's system in Kearny County, Kansas, and seeks authorization to construct and operate a meter station and a 1,220 horsepower compressor station at said interconnection for the purpose of effecting the proposed redelivery.

The estimated cost of Colorado's proposed facilities is $245,850, and will be financed with internal funds. The application states that an estimated 66 percent of the construction cost will be recovered by salvage of the facilities upon the termination of the sale involved.

In its related application, Northern proposes to deliver up to 30,000 Mcf of natural gas per day to Cabot for the account of Colorado. Colorado proposes to deliver a like volume to Northern at a present interconnection of facilities in Kearny County, Kansas.

Northern seeks authorization to install two additional 4-inch side valves in Gray and Carson Counties, Texas, for deliveries to Cabot, with the estimated cost of $2,020 for such valves to be borne by Cabot.

The application states that the exchange is proposed for a two-year period commencing with the date of initial delivery of gas to Cabot by Northern.

Service under the proposals is to be rendered in accordance with Colorado's Rate Schedule X-23 and Northern's exchange agreement as Rate Schedule X-10.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the applications has been filed.

At a hearing held on March 19, 1965, the Commission on its own motion received and made a part of the record in these proceedings all evidence, including the applications and exhibits, submitted in support of the authorization sought herein and upon consideration of the record,

The Commission finds:

(1) Colorado Interstate Gas Company, a Delaware corporation having its principal place of business in Colorado Springs, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued June 5, 1945, in Docket No. 294 (4 FPC 936).

(2) Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G–280 (3 FPC 967).

(3) The proposed construction and operation of facilities and sale and exchange of natural gas, as hereinbefore described and as more fully described in the applications and exhibits in these proceedings, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The aforesaid proposed construction and operation of facilities and sale and exchange of natural gas are required by the public convenience and necessity, and certificates therefor should be issued as hereinafter ordered and conditioned.

(5) Colorado and Northern are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(6) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder be conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(7) Colorado's related Rate Schedule X–23 to its FPC Gas Tariff, Second Revised Volume No. 2 and Northern's related Rate Schedule X–10 to its FPC Gas Tariff, original Volume No. 2 should be accepted for filing to become effective upon the date of issuance of this order.

(8) The certificate issued hereinafter should not entitle Cabot to whom firm deliveries are authorized hereinafter to any priorities or rights to additional gas for meeting any future increases in its requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

The Commission orders:

(A) Certificates of public convenience and necessity be and the same are hereby issued to Colorado and Northern, authorizing the construction and operation of facilities and the sale and exchange of up to a maximum of 30,000 Mcf per day of natural gas for a 24-month period following the date of this order, as hereinbefore described and as more fully set forth in the applications in these proceedings, upon the terms and conditions of this order.

(B) The certificates issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Colorado's and Northern's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation and the transportation of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 6 months from the date on which this order issues.

(D) Colorado's related Rate Schedule X-23 to its FPC Gas Tariff, Second Revised Volume No. 2 and Northern's related Rate Schedule X-10 to its FPC Gas Tariff, original Volume No. 2, are hereby accepted for filing to become effective upon the date on which this order issues.

(E) This certificate shall not entitle Cabot to whom firm deliveries are authorized herein to any priorities or rights to additional gas for meeting any future increases in its requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CITY OF HOLYOKE GAS & ELECTRIC DEPARTMENT, PROJECT NO. 2387

ORDER ISSUING LICENSE (MINOR)

(Issued March 24, 1965)*

Application was filed on July 5, 1963, by the City of Holyoke Gas & Electric Department (Applicant) for a license under Section 4(e) of the Federal Power Act (Act) for constructed Project No. 2397, known as Power Project No. 2, located on the canal system along the Connecticut River within the City of Holyoke, in Hampden County, Massachusetts.

Power Project No. 2 was completed in April 1938.

The canal system upon which Power Project No. 2 is situated takes water from the Connecticut River, a navigable water of the United States, and discharges the water back into the Connecticut River at a point downstream. On July 5, 1949, the Commission issued a license to the Holyoke Water Power Company for Project No. 2004 which included therein the canal system as a part of the project works, but not the hydroelectric facilities owned by others and located along the canal system.[1] No lands of the United States are affected by the project.

The Department of the Army and the Chief of Engineers have reported that the plans of the project structures affecting navigation are satisfactory insofar as the interests of navigation are concerned.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project certain conditions in the interests of fish and wildlife and recreation.

The Department of Health, Education, and Welfare has advised of a need for a detailed study of the area affected by the project and would report further upon completion of the study. However, on September 15, 1964, the Department advised that such a report would not be forthcoming for perhaps a year or so.

In accordance with the criteria set forth in our April 25, 1962 Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date as of April 1, 1938 and a terminating date of March 31, 1988.

Pursuant to petition therefore, the Commission, by order issued January 26, 1965, permitted Holyoke Water Power Company, of Holyoke, Massachusetts, to intervene in this proceeding.

---

*Rehearing granted by order issued May 10, 1965, unreported.

[1] Article 16 of the license for Project No. 2004, provides:

Article 16. The Licensee shall follow a plan of operation which will result in a maximum economic utilization of the water of the Connecticut River at Holyoke, Massachusetts, through the facilities along the existing canals and through the new power plant covered by this license, consistent with the use of water for process and other essential purposes.

The Commission finds:

(1) The project affects navigable waters of the United States.

(2) Applicant is a municipal corporation organized under the laws of the Commonwealth of Massachusetts and a municipality, as defined by Section 3(7) of the Act, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. No protests or petitions to intervene in opposition to the project have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 1,067 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(7) It will be in the public interest to waive pursuant to Section 10(i) of the Act the terms and conditions contained in the following sections of part I of the Act:

Section 4(b), except the second sentence thereof; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 15; 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

The Commission orders:

(A) This license is hereby issued to the City of Holyoke Gas & Electric Department under Sections 4(e) and 10(i) of the Act for a period of 50 years, effective as of April 1, 1938 and terminating March 31, 1988, for the continued operation and maintenance of Project No. 2387, located on the canal system of the Holyoke Water Power Company which takes water from the Connecticut River, a navigable water of the United States, subject to the terms and conditions of the Act not expressly waived herein, which Act is hereby incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2387 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined; and

(ii) project works consisting of: a 1017 hp turbine connected to an 800 kw vertical hydro generator operating under a 19.5 foot head; two 9-foot diameter steel penstocks, 240 feet in length; and two 9-foot by 10-foot brick tailraces, 120 feet in length.

(iii) all other structures, fixtures, equipment, or facilities which are located in the project area and are used or useful in the maintenance and operation of the project; all rights and interests the possession of which are necessary or appropriate to the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-9 (July 1, 1964) entitled, "Terms and Conditions of License for Constructed Minor Project Affecting Navigable Waters of the United States" (32 FPC 577), which terms and conditions designed as Articles 1 through 11, are attached hereto and made a part hereof; and subject to the following special conditions set forth herein as additional articles:

Article 12. The Licensee shall pay to the United States the following annual charge:

(i) For the purpose of reimbursing the United States for the costs of adminstration of Part I of the Act for the period April 1, 1938 through March 31, 1962, an annual charge of $5.00 and effective April 1, 1962 an annual charge of $53.00.

Article 13. The Licensee (City of Holyoke Gas & Electric Department) shall cooperate with the Licensee for Project No. 2004 (Holyoke Water Power Company) in order that the conditions of Article 16 of the license for Project No. 2004 can be fulfilled.

(D) The terms and conditions of the Act, which it has been found above to be in the public interest to waive, are hereby excluded from this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of this acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NEVADA IRRIGATION DISTRICT, PROJECT NO. 2266

ORDER APPROVING AMENDED PROJECT EXHIBITS

(Issued March 24, 1965)

On April 6, 1964, Nevada Irrigation District, licensee for Project No. 2266, filed an amended Exhibit K drawing to show revisions in the project boundary at Jackson Meadows reservoir and amended Exhibit L drawings relating to the Jackson Meadows, Dutch Flat No. 2, and Rollins developments; and on September 10, 1964, filed amended Exhibit L drawings for the Faucherie development. The licensee seeks Commission approval of the amended exhibits.

With respect to the Jackson Meadows Development, Exhibit K-2 Amended, "Jackson Meadows Reservoir", (FPC No. 2266-91) shows revised elevations and boundaries by surveys made subsequent to issuance of the license for the project. The originally proposed angled axis of the Jackson Meadows dam was revised to a curved one as a result of further site explorations. The spillway chute was lengthened by 100 feet to comply with the requirements of the California State Department of Water Resources, and the normal water surface was raised three feet to comply with the requirements of the California Department of Fish and Game concerning the maintenance of minimum dead storage. The height of each taintor gate was increased by one foot to provide minimum freeboard. The top width of the dam was increased by 11 feet to comply with U.S. Forest Service requirements for a roadway. There has been no change in the spillway capacity. The licensee advises that an estimated savings of $21,000 was effected by relocating the valves at the tunnel outlet, thereby eliminating the vertical access shaft. The U.S. Forest Service has advised that the changes do not interfere and are not inconsistent with the purposes for which the Tahoe National Forest was created or acquired.

With respect to the Faucherie Development, the amended exhibits show that the rock-fill, sloping impervious-cored and filter-zoned Faucherie dam, with only minor changes is similar in general design principles to that originally proposed by the licensee.

With respect to Dutch Flat No. 2 Penstock and Forebay Unit, the amended exhibits show that the penstock diameters have been increased slightly as a result of final economic studies by the licensee. Vertical shaft control works for the penstock were changed to an intake structure. This resulted in a savings of about $16,000. The design for the rolled impervious-fill Forebay dam now provides for a cutoff trench carried to sound bedrock and the crest of dam changed from elevation 3340.0 to elevation 3336.0.

With respect to Dutch Flat No. 2 Afterbay Dam, the amended exhibits show that it has been located about 1,500 feet downstream from the originally proposed dam site, and is a gravel-fill structure with a compacted impervious center core confined by 12-foot upstream and downstream filter zones which, in turn, are confined by compacted upstream and downtown shell zones each superimposed by a layer of cobbles. The dam was changed from the originally proposed arch dam to a gravel-fill structure when it became evident, from further site investigations of geologic and foundation conditions, that an arch dam would not be feasible. The spillway will pass all anticipated discharges from the upstream Lake Spaulding.

With respect to the Rollins Development, the dam was changed from the originally designed and approved gated to an ungated structure to meet the requirement of the California Department of Water Resources. The spillway capacity has not changed from that originally approved by the Commission. The Licensee advises that it has saved an estimated $30,400 by changing the access to the outlet works from a shaft to a tunnel.

The above-mentioned project changes have been reviewed by our staff and have been found to be safe and stable.

The Commission finds:

The amended Exhibit K and L drawings described conform to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

(A) The following described amended exhibits are hereby approved as part of the license for Project No. 2266.

Exhibit	FPC No. 2266	Entitled
K-2 Amended	-91	Jackson Meadows Reservoir.
L-2 Amended	-93	Jackson Meadows Dam.
L-4 Amended	-94	Jackson Meadows Diversion and Unwatering.
L-10A Amended	-109	Faucherie Unwatering.
L-10B Supplement to Exh. L-10 Amended	-110	Faucherie Unwatering.
L-40A Amended	-97	Dutch Flat No. 2 Forebay.
L-40B Amended	-98	Dutch Flat No. 2 Forebay Unwatering.
L-42 Amended	-99	Dutch Flat No. 2 Afterbay Dam.
L-47A Amended	-100	Rollins Dam.
L-47B Amended	-101	Rollins Spillway.
L-49 Amended	-102	Rollins Diversion and Unwatering.

(B) The following described exhibits which are now part of the license for the project and which have been superseded are hereby eliminated from the license: Exhibit K-2 (FPC No. 2266-7); Exhibit L-2 (FPC No. 2266-44); Exhibit L-4 (FPC No. 2266-46); Exhibit L-10 (FPC No. 2266-52); Exhibit L-42 (FPC No. 2266-82); Exhibit L-47 (FPC No. 2266-87); Exhibit L-49 (FPC No. 2266-89); and Exhibit L-40 (FPC No. 2266-80), "Dutch Flat No. 2 Forebay and Penstock" to the extent it shows sections of the dam and tunnel.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

APPLICATIONS OF NATURAL GAS PIPELINE COMPANIES TO ABANDON FACILITIES OR SERVICE; EXHIBITS, DOCKET NO. R-271

ORDER NO. 295

AMENDING § 157.18 OF REGULATIONS UNDER THE NATURAL GAS ACT

(Issued March 24, 1965)*

This order amends § 157.18 of the Commission's Regulations under the Natural Gas Act to require the inclusion of a map showing the location of facilities to be abandoned as one of the exhibits in support of an application for authorization to abandon facilities or service pursuant to section 7(b) of the Natural Gas Act. Such maps are now required[1] in connection with a single application requesting both a certificate under section 7(c) and an abandonment authorization under section 7(b), but the lack of such a specific requirement in the abandonment rule, here being amended, has caused confusion. Some applicants include maps with their abandonment applications but others do not. This has been brought to our attention by several companies which have suggested that it would be advisable to require the inclusion of a map, thus assuring that all interested parties will know the exact location of the facilities that the applicant is proposing to abandon.

The Commission finds:

(1) Compliance with the notice provisions of section 4 of the Administrative Procedure Act is unnecessary since the amendment herein adopted is of a clarifying nature in that it no more than explicitly requires the filing of an exhibit which contains information now implicity required to be filed as part of another exhibit.

(2) The amendment adopted herein is necessary and appropriate for the purposes of administration of the Natural Gas Act.

The Commission, acting pursuant to the authority granted by the Natural Gas Act, as amended, particularly sections 7(b) and 16 thereof (52 Stat. 824, 830; 15 U.S.C. 717f(b), 717o) *orders:*

(A) Section 157.18, Part 157, Subchapter E of Chapter I, Title 18 of the Code of Federal Regulations, is amended by adding a new paragraph (g) as follows:

§ 157.18 Application to abandon facilities or service; exhibits.

* * * * * * *

(g) *Exhibit Z—Location of facilities.*

Unless shown on Exhibit V or elsewhere, a geographic map of suitable scale and detail showing, and appropriately differentiating between, all of the facilities proposed to be abandoned and the other existing facilities of applicant, the operation or capacity of which will be directly affected by the facilities to be abandoned. This map shall clearly show the relationship of the facilities to be abandoned to the applicant's overall system and shall include:

---

*Published in the Federal Register on March 30, 1965 (30 F.R. 4129).

[1] § 157.14(a)(6), Regulations under the Natural Gas Act.

(1) Location, length and size of pipelines.

(2) Location and size (rated horsepower) of compressor stations.

(3) Location and designation of each point of connection of existing facilities with (i) main line industrial and other consumers, pipeline or distribution companies and municipalities, indicating towns and communities served at wholesale or retail and (ii) gas-producing and storage fields, or other sources of gas supply. Designate on the map those facilities and services proposed to be abandoned.

[Sections 7(b), 16, 52 Stat. 824, 830; 15 U.S.C. 717f(b), 717o.]

(B) The amendment prescribed herein shall become effective on May 1, 1965.

(C) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

THE SUPERIOR OIL COMPANY v. TRUNKLINE GAS COMPANY, UNION OIL COMPANY OF CALIFORNIA AND PAN AMERICAN PETROLEUM CORPORATION, DOCKET NO. CI65-300

ORDER DENYING MOTIONS FOR RECONSIDERATION[1]

(Issued March 24, 1965)

On the dates set forth below, Trunkline Gas Company (Trunkline), Union Oil Company of California (Union) and Pan American Petroleum Corporation (Pan American) respectively, filed applications for rehearing (pursuant to Section 1.34 of the Commission's Rules of Practice and Procedure) of the Commission's order of February 1, 1965, 33 FPC 144, in the above proceeding, which denied motions of these respondents to dismiss the complaint filed against them by The Superior Oil Company (Superior) under Section 5(c) of the Outer Continental Shelf Lands Act:

Union Oil Company of California—February 26, 1965
Pan American Petroleum Corporation—February 26, 1965
Trunkline Gas Company—March 1, 1965

We do not consider these applications for rehearing as falling within the ambit of Section 19(a) of the Natural Gas Act and Section 1.34 of the Commission's Rules of Practice and Procedure, since the order of February 1, 1965 was merely an interlocutory order noticing and setting procedures for hearing of the complaint; and, consequently, we shall treat these applications as motions for reconsideration of that order.

Upon reviewing the specifications of error and grounds for "rehearing", it appears that the "applications" essentially repeat the positions taken in the various initial motions to dismiss the complaint. There are no new arguments presented which have not already been considered in the order of February 1 1965. A question of fact is raised by Union's assertion that the Commission erred in holding that the pipeline (Transco) which is nearest to Superior's leases is not making any purchases in the vicinity of said leases and has no facilities to do so. Upon further investigation, we find that Transco does purchase natural gas in Block 14 Field. While this fact may be relevant to our determination of the merits of the complaint it is not grounds for its dismissal.

---

[1] We are treating the applications for rehearing as motions for reconsideration

The Commission finds:

(A) The applications for rehearing filed by Trunkline, Union and Pan American are addressed to an interlocutory order which (1) notices the complaint of Superior for hearing under Section 5(c) of the OCSLA and (2) denies respondents' motions to dismiss the aforesaid complaint. Consequently, the applications, since they are not addressed to a final order, should be treated as motions to reconsider the Commission's denial of the motions of respondents to dismiss Superior's complaint.

(B) The motions for reconsideration present no matters of substance which require modification or change of the order of February 1, 1965, and fail to state any new grounds not already presented in the original motions.

The Commission orders:

The applications of Trunkline Gas Company, Union Oil Company of California and Pan American Petroleum Corporation, having been considered herein as motions for reconsideration of the Commission's denial of the respondents' motions to dismiss the complaint, should be and hereby are denied for the reasons indicated above.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

THE SUPERIOR OIL COMPANY v. TRUNKLINE GAS COMPANY, UNION OIL COMPANY OF CALIFORNIA, AND PAN AMERICAN PETROLEUM CORPORATION, DOCKET NO. CI65-300

DENIAL OF MOTIONS FOR CONSOLIDATION

(Issued March 24, 1965)

On February 19, 1965, Union Oil Company of California (Union) and Pan American Petroleum Corporation (Pan American) filed motions to consolidate the above proceeding with the proceeding entitled The Superior Oil Company, Docket No. G-6067.

On July 23, 1964, the Commission issued its Opinion in Docket No. G-6067, Opinion No. 437, 32 FPC 241. That Opinion was directed to a request by Superior to substitute undedicated offshore acreage for other unconnected offshore acreage dedicated to American Louisiana Pipe Line Company under the terms of a contract dated July 17, 1953. The Commission in Opinion No. 437 granted Superior's request to substitute new acreage for that originally contemplated; however, it specifically made its authorization subject to certain conditions. The conditions imposed by the Commission primarily dealt with the total initial price that Superior could charge for its gas. It is understood that Superior has not accepted the modified certificate.

Pan American and Union contend that the consolidation requested is appropriate because Docket No. G-6067 "remains open" and is subject to further Commission action. They further contend that "common questions of fact and law" exist in both proceedings, and that certain testimony and exhibits reflected in the record in Docket No. G-6067 relating to estimated recoverable reserves underlying Superior's leases in Block 14 Field are relevant and material to the instant proceeding.

Docket No. G–6067 involves a certificate application under Section 7 of the Natural Gas Act, and, even assuming arguendo it is still open, its consolidation with the present proceeding arising under Section 5 of the Outer Continental Shelf Lands Act would not be in the public interest. However, Union and Pan American may seek to incorporate specific exhibits from the record in Docket No. G–6067 into the record in the instant proceeding to the extent such action is found to be appropriate and useful by the Presiding Examiner.

The Commission orders:

The motion filed on February 19, 1965, by Union Oil Company of California and Pan American Petroleum Corporation to consolidate Docket No. G–6067 with the instant proceeding be and hereby is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP65–93; VALLEY GAS TRANSMISSION, INC., DOCKET NO. CP65–123

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 24, 1965)

On October 6, 1964, Tennessee Gas Transmission Company (Tennessee Gas) filed in Docket No. CP65–93 an application, as supplemented on November 6, 1964, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to an additional 10,000 Mcf (at 14.65 psia) of natural gas daily for Iroquois Gas Corporation (Iroquois) from points of interconnection in Texas and Louisiana with Valley Gas Transmission, Inc. and the delivery thereof at existing points of delivery to Iroquois in the State of New York, all as set forth in the application and supplement.

On November 4, 1964, Valley Gas Transmission, Inc. (Valley Gas) filed in Docket No. CP65–123 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and the sale of additional quantities of natural gas to Iroquois Gas Corporation (Iroquois), all as more fully set forth in the application.

Valley Gas proposes to construct at an approximate cost of $170,000 and to operate approximately 2.5 miles of 6-inch, 4.0 miles of 4-inch, and .4 miles of 2-inch pipeline together with appropriate metering, regulating and appurtenant facilities in connection with the proposed sale of additional natural gas to Iroquois and to deliver an average daily quantity of 10,000 Mcf of natural gas at various points on Tennessee Gas' system in Nueces and Wharton Counties, Texas, and Cameron Parish, Louisiana. Tennessee Gas will transport for the account of Iroquois the said additional volumes of natural gas through its system to its East Aurora Sales Meter Station located in Erie County, New York, at which point delivery will be made to Iroquois. Valley Gas' initial price to Iroquois for the sale involved is 17.0 cents per Mcf at 14.65 psia.[1]

---

[1] This price is 1.33 cents per Mcf less than the price Valley Gas' present sale of 25,000 Mcf of natural gas per day to Iroquois authorized in Docket No. CP63–270.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the applications has been filed.

At a hearing held on March 19, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence including the applications and supplement thereto in Docket Nos. CP65-93 and CP65-123, and exhibits filed in the proceedings in support of the authorizations sought, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of July 15, 1947, in Docket No. G-910 (6 FPC 777).

(2) Applicant, Valley Gas Transmission, Inc., a Texas corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 29, 1960, Docket No. G-19618 (25 FPC 233).

(3) The proposed transportation and delivery of natural gas by Tennessee Gas for the account for Iroquois, as hereinbefore described and as more fully described in the application and supplement on file in Docket No. CP65-93, and the sale of natural gas by Valley Gas to Iroquois and the construction and operation of facilities as hereinbefore described, and as more fully described in the application on file in Docket No. CP65-123 are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The aforesaid proposed transportation and delivery of natural gas by Tennessee Gas, and the sale of natural gas together with the construction and operation of facilities by Valley Gas are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(5) Tennessee Gas and Valley Gas are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(6) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder be conditioned upon Tennessee Gas' and Valley Gas' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly Tennessee Gas' compliance with the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations, and Valley Gas' compliance with the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) Certificates of public convenience and necessity be and the same are hereby issued to (1) Tennessee Gas Transmission Company authorizing the transportation of natural gas for the account of Iroquois, as hereinbefore described, and as more fully described in the application and supplement on file in Docket No. CP65-93, and (2) Valley Gas authorizing the sale of natural gas to Iroquois and the construction and operation of facilities as hereinbefore described and as more fully described in the application on file in Docket No. CP65-123, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificates issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Tennessee Gas' and Valley Gas' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations applicable to Tennessee Gas, and paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations applicable to Valley Gas.

The facilities hereby authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid regulations within 6 months of the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black

ATLANTIC SEABOARD CORPORATION, G-16401; HOME GAS COMPANY, G-16402; KENTUCKY GAS TRANSMISSION CORPORATION, G-16403; THE MANUFACTURERS LIGHT AND HEAT COMPANY, G-16404; UNITED FUEL GAS COMPANY, G-20270; ATLANTIC SEABOARD CORPORATION, G-20272

ORDER DENYING APPLICATION FOR REHEARING AND RECONSIDERATION

(Issued March 25, 1965)

On February 26, 1965, Lynchburg Gas Company (Lynchburg), filed an Application for Rehearing and Reconsideration of the Commission's orders issued January 28, 1965, in Docket No. G-16401, *et al.*, 33 FPC 113, and Docket No. G-20270, *et al.*, 33 FPC 123, respectively. That application requests the Commission to vacate those orders insofar as they purport to authorize the Columbia Companies[1] to maintain partial requirements CDS-PR rate schedules pending the outcome of further hearings in Docket No. G-16401, *et al.*, in accordance with the opinion of the Court of Appeals for the District of Columbia in *Lynchburg Gas Company* v. *F.P.C.*, 336 F. 2d 942.

Lynchburg states that it is filing its application because the Commission's orders reinstating the original PR schedules are premised on a complete misunderstanding and misstatement of Lynchburg's position and because it seeks "to preclude the possibility, in any future review proceeding, that it will be charged with failure to exhaust its administrative remedy".

We find Lynchburg's first indicated purpose for filing this application, and its arguments in support thereof, to be without merit. We deem it unnecessary to comment on the second stated purpose.

The thrust of Lynchburg's argument is that "no PR rate is on file or can validly be filed until after *proof* is made (assuming, *arguendo*, such proof can be made) that a PR rate is warranted." Clearly, Lynchburg is again contending that the Court by its opinion declared the PR rates null and void and completely terminated all further proceedings in the above dockets. Moreover Lynchburg's position amounts to a contention that the Court's remand "for further proceedings not inconsistent with the opinion of this Court" requires the institution of at least two new proceedings before any PR rate could be finally approved. First, before any rate proposal could be even filed, any pipeline would apparently be required to prove whether a PR rate is or is not warranted. Second, if it is determined that a PR rate is warranted, Lynchburg would assert that a hearing on the merits of the rate proposal thereafter filed would also be necessary.

That these arguments are untenable and contrary to the Court's opinion is patent from that decision. Moreover, these arguments and others raised by

---

[1] These include only the four companies docketed in Docket No. G-16401, *et al.* United Fuel Gas Company has no partial requirements rate schedule.

Lynchburg in its petition for declaratory order were fully dealt with by our order issued January 28, 1965.

The other contentions in Lynchburg's application present no bases for our deviating from our previous determination. Accordingly, we find that such application should be denied.

The Commission orders:

The application for rehearing and reconsideration filed by Lynchburg on February 26, 1965 hereby is denied.

Commissioner Ross *dissenting.*

Ross, *Commissioner, dissenting:*

The majority is imposing the CDS–PR tariff which the Commission unanimously found to be unjust and unreasonable in Opinion No. 368 (*Atlantic Seaboard Corporation*, 28 FPC 860). No appeal was taken from this aspect of the Commission's determination and it must be adjudged conclusive. While the Court has reversed the Commission's determination with respect to a different tariff prescribed in that opinion, that fact hardly provides any satisfactory basis for resurrecting the tariff initially proposed by the companies and rejected by the Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

COLUMBIAN FUEL CORPORATION

ORDER DENYING APPLICATION FOR REHEARING

(Issued March 25, 1965)

Columbian Fuel Corporation (Columbian) on February 26, 1965, filed an application for rehearing of the Commission's letter-order of January 28, 1965, denying Columbian's request for a retroactive effective date of April 25, 1960, for its proposed increased rates of 14.6334¢ per Mcf, designated as Supplement Nos. 2 and 4 to Columbian's FPC Gas Rate Schedule Nos. 15 and 23, respectively, for sales of gas to Hugoton Plains Gas & Oil Company (Hugoton). The proposed rates had been accepted by order issued August 19, 1964 to be effective as of August 20, 1964, which was thirty days after filing.

Columbian seeks to make its increased rates effective for the period it was contractually authorized to file for such rates but did not do so. In support of its request, Columbian contends, among other things, that (1) with respect to its FPC Gas Rate Schedule No. 15, its interest therein under Section 154.91(b) of the Commission's Regulations is covered under the rate schedule of the operator, Texaco Inc.; (2) since the amount of the rate increase under its FPC Gas Rate Schedule No. 23 was indefinite and uncertain in 1960 because Hugoton's related increase of 20.5457¢ per Mcf was in effect subject to refund, it is entitled under the court decision in *Phillips Petroleum Company* v. *F.P.C.*, 258 F. 2d 906 (CA10–1958) retroactively to collect the contractually authorized rate; (3) The Commission's action in the instant case is inconsistent with the action taken in the order issued February 8, 1965, in the *D. Clayton Arnold* case in Docket No. CI65–358 where a certificate was issued to Arnold and his rate schedule was accepted with an initial rate of 14.6334¢ per Mcf effective as of April 7, 1960; and (4) the failure of Hugoton to give Columbian formal notice of the approval of Hugoton's settlement in Docket No. RI60–102 caused Columbian to refrain from filing for its contractually authorized rate as of October 8, 1963, the date of approval of Hugoton's settlement.

While a signatory operator is required under Section 154.91(b) of the Regulations to cover in its filings all signatory co-owners which do not exercise the choice given them under that section of making their own filings, once the signatory co-owner has elected to make his own filings, as Columbian did here, it is bound by its choice and is not free to utilize the operator's filings or its own depending on which are most advantageous to it. Here Columbian chose to make its own filings as permitted under Section 154.91(b). It is therefore in no position to claim now that it is covered by Texaco's filings.

The *Phillips* decision to which Columbian refers is a case in which the court ruled that Phillips' initial rate as of June 7, 1954, was the rate provided for in the contract and not the rate appearing in the billing statement filed by Phillips. That case has no applicability here since Columbian is not seeking to correct an initial rate filing but is attempting to obtain a retroactive effective date for an increased rate that it could have filed at an earlier date. Although Columbian's contractual right in 1960 to a higher rate was subject to later invalidation if Hugoton's related increase was disallowed, Columbian was fully apprised at that time of its maximum contractual rights to a rate increase.

The *Arnold* decision is also inapplicable here. Arnold did not have a rate schedule on file at the time he was contractually authorized to receive a higher rate because he had been assured by Hugoton that his interest was covered under Hugoton's rate schedule. Since Columbian had its own rate schedule on file and could have filed for the contractually authorized rate increase, it is clear the two situations are not similar.

While there may be certain equitable considerations in favor of Columbian's position that the failure of Hugoton to give Columbian prompt notice of approval of its offer of settlement caused Columbian to refrain from filing (assuming *arguendo* that Hugoton had the obligation to give such notice and Columbian did not otherwise receive notice of such settlement), such considerations alone do not in our view warrant a departure from the filed rate doctrine by permitting Columbian to obtain a retroactive effective date here.

The Commission orders:

For the reasons set forth above, the application for rehearing filed by Columbian on February 26, 1965 of the Commission's letter-order issued January 28, 1965, is hereby denied.

MARTHA FEATHERSTONE,[1] DOCKET NO. CI64–591; W. S. KILROY (OPERATOR), DOCKET NO. CI63–434; THE ATLANTIC REFINING COMPANY, DOCKET NO. CI63–576; GRAHAM B. MORRISON AND GLEN W. PRYOR, TRUSTEES, DOCKET NO. G–18884

ORDER ADOPTING INITIAL DECISION OF PRESIDING EXAMINER

(Issued March 25, 1965)*

Syllabus

1. Permanently certificated sales are to be preferred over temporary sales in determining in-line price if there are sufficient sales and substantial volumes to provide sound basis for such determination. P. 627.

---

*Initial decision appears on p. 623. Rehearing denied by order issued May 13, 1965, 33 FPC 1000.

[1] This consolidated proceeding was formerly captioned *Gulf Oil Corporation*, Docket No. CI64–25, *et al.* Since the initiation thereof, this docket and others have been severed and permanent certificates issued by various Commission orders. (A listing is included in the examiner's decision. By letter filed March 5, 1965, the applicants in Docket No. G–18884 stated their willingness to accept a certificate conditioned in accordance with the examiner's decision.

2. Evidence in instant case does not indicate any normal practice in Wyoming that buyers or pipeline companies buy gas undehydrated and uncompressed at wellhead. P. 628.
3. There is no justification here for any incremental allowance to cover claimed special services performed by producer beyond wellhead. P. 629.
4. 15.384 cents per Mcf found to be in-line price for instant sales. P. 630.
5. Application dismissed where producer failed to appear or submit necessary evidence.
6. Commission *issues* certificates of public convenience and necessity under Section 7 of the Natural Gas Act.

Bernard A. Foster, Jr., and *Stuart J. Scott* for the Atlantic Refining Company.

Bernard A. Foster, Jr., for Graham B. Morrison and Glen W. Pryor, Trustees.

Clifford O. Stone, Jr., Harold H. Young, Jr., J. P. Hammond, T. J. Files, Frank Houck, and *Carroll L. Gilliam* for Pan American Petroleum Corporation.

Donald R. Arnett, Warren M. Sparks and *Arthur F. Whitt* for Gulf Oil Corporation.

Royal J. Voegeli for Belco Petroleum Corporation.

J. Calvin Simpson, Richard E. Tuttle and *Sheldon Rosenthal* for the People of the State of California and Public Utilities Commission of the State of California.

Richard W. Sabin for Public Utility Commissioner of Oregon.

Julia B. Smith for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

On January 22, 1965, the Presiding Examiner issued his initial decision in this case holding that certificates of public convenience and necessity should be issued under Section 7(e) of the Natural Gas Act to three of the four captioned producer applicants authorizing the sales of gas to three pipeline purchasers, but at a price lower than proposed in the applications. The application filed by Martha Featherstone in Docket No. CI64–591 would be dismissed for failure to appear or to submit the necessary evidence. As a condition to the certificates issued in the remaining dockets, the initial decision would require that each applicant file a supplement to its presently filed rate schedule to reflect an initial price, including all reimbursements and charges, and regardless of delivery pressure or other alleged services performed by the producer prior to the point of sale, not greater than 15.384 cents per Mcf at 15.025 psia from the date of issuance of the decision and until changed in the manner provided in the Act. Additional conditions would require certain refunds and makes the take-or-pay for provision in the applicants' contracts subject to ultimate disposition in the rule-making proceeding in Docket No. R–199.

A brief on exceptions to the Examiner's decision was filed on February 19, 1965, by The Atlantic Refining Company. Atlantic contends that the price condition, as applied to it, is unwarranted on the ground that the Examiner erroneously determined the in-line price for Wyoming to be 15.384 cents per Mcf and, further, that even assuming the propriety of such price generally, it remains erroneous as applied to Atlantic for the reason that Atlantic is entitled to an additional price increment on the basis of various allegedly unique and valuable services which it performs beyond the wellhead prior to effecting delivery. Atlantic, in excepting to the initial decision, maintains that its initial contract price of 17.0 cents per Mcf is justified and that certification thereof would be in the public interest.

On our review we conclude that the Examiner's decision is correct respecting all the issues in this case, and that we should adopt it as our decision herein.

His decision is based upon adequate findings which are substantially supported by the record and are grounded upon a correct application of the law. All material objections to the Examiner's decision advanced in the exceptions are adequately dealt with by the Examiner and require no further comment.

The Commission further finds:

Upon consideration of the entire record in this proceeding, including the evidence adduced, the briefs and exceptions filed, and the Presiding Examiner's initial decision, said decision should be adopted as the decision of the Commission in this case and the exceptions thereto should be denied.

The Commission orders:

(A) The initial decision of the Presiding Examiner issued herein on January 22, 1965, is hereby adopted and such decision shall become effective as the decision of the Commission as of the date of issuance of that order.

(B) The exceptions to the Examiner's decision referred to hereinabove are denied.

INITIAL DECISION OF THE PRESIDING EXAMINER

(Issued January 22, 1965)

SHRIVER, *Presiding Examiner.* This is a consolidated proceeding under sections 7 (c) and (e) of the Natural Gas Act in which the producer-applicants seek permanent certificates of public convenience and necessity to sell natural gas to pipelines for resale in interstate commerce.[1] The gas involved is produced in Fremont, Sweetwater, and Sublette Counties, Wyoming. The principal issue in the case is the price at which the applicants shall be authorized to sell their gas in conformity with the public convenience and necessity.

On July 29, 1964, the Commission issued an order consolidating the nine dockets herein for hearing. On September 8, 1964, the Atlantic Refining Company moved for a prehearing conference. This motion was denied by the Examiner on September 22, 1964. Hearings were held on October 5, 6, 7 and 8, 1964.[2]

---

[1] The names of the pipeline companies are set forth in Appendix A hereto.

[2] Meanwhile, on September 9, 1964, one of the applicants, the Pan American Petroleum Corporation (Docket No. CI61-419) filed a motion for severance and for the issuance of a permanent certificate under abridged procedure in accordance with the initial price condition set out in the temporary authorization. This motion was granted by order of the Commission dated November 6, 1964, pursuant to which a permanent certificate was authorized on condition that the initial price shall not exceed 15 cents per Mcf at 14.65 psia or 15.384 cents per Mcf at 15.025 psia for all gas delivered at or in excess of 500 psig.

On September 22, 1964, the Belco Petroleum Corporation filed a motion for severance (Docket Nos. G-20104, G-19591, and G-19589) and the issuance of permanent certificates under abridged hearing procedure. By order issued December 30, 1964, the Commission severed these dockets and issued certificates in them upon condition that the initial price for all gas delivered at pressures of 100 to 860 psig shall not exceed 15 cents per Mcf at 15.025 psia and that the initial price for all gas delivered at pressures of or in excess of 860 psig shall not exceed 15.384 cents per Mcf at 15.025 psia.

On December 24, 1964, Gulf filed a petition for approval of offer of settlement and motion for severance and on January 19, 1965, the Commission granted the motion for severance, etc., issuing a certificate of convenience and necessity on condition that the initial price not exceed 15.384 cents per Mcf at 15.025 psia. On September 29, 1964, the applicant, Graham B. Morrison and Glen W. Pryor, Trustees (Docket No. G-18884) filed a motion for severance and an offer of settlement. By order dated November 18, 1964, 32 FPC 1335, the Commission denied this motion and rejected the offer of settlement.

By an order dated September 18, 1964, the Washington Natural Gas Company (State of Washington) was granted permission to intervene. On August 24, 1964, the Public Utility Commissioner of Oregon filed a notice of intervention in Docket Nos. G-20104, G-19591, G-19589, and G-18884. Notice of intervention was also filed by the People of the State of California and the Public Utilities Commission of the State of California on August 10, 1964, in Docket Nos. CI61-419, G-19589, G-19591, and G-20104.

At the hearing the parties stipulated (1) that the applicants are willing and able to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the applicable Rules and Regulations promulgated thereunder, (2) that as to each docket there exists no affiliation between the applicant and the purchasers receiving the gas proposed to be sold by the applicant, and (3) that each contract involved in the subject proceeding is a product of arm's-length bargaining.

Temporary certificates were granted in Docket Nos. CI63-434, CI63-576, CI61-419, G-20104,[3] G-19591, G-19589, and G-18884. No temporary certificates were requested or granted to Gulf (Docket No. CI64-25) or to Martha Featherstone (Docket No. CI64-591). The applicants, Martha Featherstone and W. S. Kilroy, were not represented at the hearing. The application and contract of Martha Featherstone were not offered in evidence at the hearing.

The contracts remaining involved in the proceeding were executed between May 27, 1959 and February 8, 1963.[4] The proposed initial prices for the sales range from 16.41 cents per Mcf at 15.025 psia to 17.5 cents.

Sections 7(c) and (e) of the Natural Gas Act provide among other things that no natural gas company shall engage in the sale of natural gas in interstate commerce without a certificate of public convenience and necessity issued by the Commission, that a certificate shall be issued to a qualified applicant for the sale if such sale is found to be required by the present or future public convenience and necessity, and that the Commission shall have the power to attach to the issuance of the certificate such reasonable terms and conditions as the public convenience and necessity may require.

Both the courts and the Commission have construed these provisions of the Natural Gas Act. The Supreme Court has held that the purpose of the Act was to underwrite just and reasonable rates to the consumers of natural gas. *Federal Power Commission* v. *Hope Natural Gas Company*, 320 U.S. 591 (1944). The Supreme Court has also held that a permanent certificate should not be issued unless it is shown by the application on its face or by other evidence that the proposed rate is in the public interest. *Atlantic Refining Company* v. *Public Service Commission of New York*, 360 U.S. 378, 391 (1959). In this case the Court said at pages 391-392:

> The Congress, in § 7(e), has authorized the Commission to condition certificates in such manner as the public convenience and necessity may require. Where the proposed price is not in keeping with the public interest because it is *out of line* or because its approval might result in a triggering of general price rises or an increase in the applicant's existing rates by reason of "favored nation" clauses or otherwise, the Commission in the exercise of its discretion might attach such conditions as it believes necessary.
>
> This is not an encroachment upon the initial rate-making privileges allowed natural gas companies under the Act, *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp., supra*, but merely the exercise of that duty imposed on the Commission to protect the public interest in determining whether

---

[3] This docket and the three preceding ones contain a condition that the initial price should not exceed 15.384 cents per Mcf at 15.025 psia. Docket Nos. G-19591 and G-19589 were conditioned that the initial price for gas delivered at a pressure exceeding 860 psig should not exceed 15.384 cents per Mcf. The temporary certificate granted in Docket No. G-18884 at 17.5 cents per Mcf at 15.025 psia contained a condition that any amount in excess of the amount resulting from the rate finally determined to be proper in this docket should be refunded.

[4] See Appendix A.

> the issuance of the certificate is required by the public convenience and necessity, which is the Act's standard in § 7 applications. In granting such conditional certificates, the Commission does not determine initial prices nor does it overturn those agreed upon by the parties. Rather, it so conditions the certificate that the consuming public may be protected while the justness and reasonableness of the price fixed by the parties is being determined under other sections of the Act. Section 7 procedures in such situations thus act to *hold the line* awaiting adjudication of a just and reasonable rate. [Italics supplied.]

What is meant by out of line or in-line and the criteria to be utilized in arriving at an appropriate initial price for gas in a section 7 proceeding has been considered by the courts and by the Commission in numerous cases. Thus in *United Gas Improvement Co.* v. *F.P.C.*, 283 F. 2d 817, 824 (1960) it was held that "the price line is intended to reflect current conditions in the industry. Therefore, comparative prices upon which it is based must be prices under which a substantial amount of gas presently moves in interstate commerce * * * it would be an abuse of discretion for the Commission in establishing a price line to rely upon producer prices which are under such a cloud." (Prices used for comparative purposes which are under review in pending court and Commission proceedings.) "As used in *CATCO*, the line means the price at which similar sales, not suspect, were made under similar circumstances from the same area about the same time." *Atlantic Refining Co.* v. *F.P.C.*, 316 F. 2d 677, 680 (1963).

The Commission has held that, "The in-line price is not a mechanical reflection of certificated prices or of the market. It is, rather, the Commission's considered judgment as to the maximum initial price appropriate in the interest of the public convenience and necessity reflecting the current conditions in the industry." *Union Texas Petroleum, et al.*, Opinion No. 436, July 23, 1964, 32 FPC 254 at p. 260. "* * * the key element in our in-line determination is the time at which the contract in issue was executed * * * the evidence must relate to a period reasonably contemporaneous with the contracts in issue." *Hassie Hunt Trust, Operator, et al.*, Opinion No. 412, December 9, 1963, 30 FPC 1438 at p. 1442. "The fact that some of the permanently certificated sales have been approved in uncontested proceedings does not, standing alone, serve to diminish or destroy their otherwise precedential value in the formulation of a price line." *Amerada Petroleum Corporation, et al.*, Opinion No. 442, March 23, 1964, 31 FPC 623 at p. 631. "* * * we disagree with the examiner that the series of Court Opinions establishing the 'suspect price doctrine' support the proposition that temporary authorizations have no relevance in this determination." Notwithstanding that "* * * permanent certificates are decidedly more persuasive and relevant in 'in-line' determinations than are temporary authorizations, but this does not thereby render temporary authorizations *per se* inadmissible." *Ibid.* p. 632. We turn now to a consideration of the evidence in the case.

Three witnesses appeared on behalf of the producers at the hearing and one on behalf of the Staff. The producer's principal witness was an economist, Dr. Paul J. Garfield. Dr. Garfield testified for The Atlantic Refining Company and its contract dated July 30, 1962, Docket No. CI63-576. The initial base price for the sale of gas under this contract is 16.58 cents per Mcf at 14.65 psia. or 17 cents at 15.025 psia. The witness concluded that Atlantic could justify a price higher than its contract price of 17 cents. In support of his recommendation, the witness prepared an exhibit (Ex. No. 1) listing 54 contracts for the sale of gas in Wyoming for the five-year period of January 1, 1959 to December 31, 1963.

This list included five of the nine dockets consolidated in this proceeding. The list is made up of proposed or initial base price sales.

Although the witness stated that timewise Atlantic's contract falls close to the center of the time period he selected, this is erroneous. Atlantic's July 30, 1962 contract falls approximately in the center of a 1959–1965 time period rather than the center of the witness' 1959–1963 period.

The witness' exhibit discloses that there were 12 interstate sales of gas in Wyoming in 1962, the year of Atlantic's contract. This number included two of the subject contracts, Atlantic's and one other. Although two of the 12 sales were made at an initial base price of 17.50 cents per Mcf at 14.65 psia,[8] and the Atlantic sale at 16.58 cents, the arithmetical average price for the year 1962 was 14.32 cents. For the year preceding, namely 1961, the exhibit shows that 12 sales were made and the highest priced sale was at 15 cents per Mcf. The average for the 12 sales was 13.21 cents. For the year following, that is 1963, the exhibit reveals that 20 sales were made inclusive of two of the subject contracts. The highest priced sale was 16 cents and the average price of the 20 sales was 14.50 cents. The average sales price of the 54 sales for the period January 1, 1959 to December 31, 1963 was 14.18 cents per Mcf.

When the five subject contracts are excluded the average price for the five-year period drops to 13.99 cents per Mcf at 14.65 psia.

Although the producer's chief witness testified at length at the hearing (direct testimony) most of his testimony related to gathering, compression, dehydration and market trends and did not culminate in his recommended price. In support of his recommended price he points to a few sales and to delivery volumes set forth in Schedules 2 and 3 of Exhibit 1. As to Schedule 2 he states "in the five-year time period under review, [January 1, 1959–December 31, 1963] 47.5 percent of the total delivery volume under new contracts was priced *at or above* 16.58 per Mcf (14.65 psia)." Referring to Schedule 3 he states "Schedule 3 excludes the subject contracts, and shows that 38.5 percent of the delivery volume in new contracts during this time period [1959–1963] was priced *above* an initial price level of 16.58 cents per Mcf (14.65 psia)." An analysis of the foregoing statements reveals that they provide no sound basis for the price recommended.

Since all the sales upon which the witness relies fall within three years it is inappropriate to characterize the delivery volume as being priced in a five-year period. The witness' first statement is based upon three sales in 1959, two in 1960, and three in 1962. The subject Atlantic sale accounts for 14.6 percent of his 47.5 percent of volume. The fallacy of determining an in-line price solely upon a few sales and by volume is illustrated by the fact that although the witness says that 47.5 percent of the total delivery volume was priced *at or above* 16.58 percent per Mcf, three sales (including the subject sale) out of a total of eight in the years 1959, 1960, and 1962 account for 43.77 percent of the total volume whereas the remaining five sales account for only 3.68 percent of the volume. In the witness' second statement, where the subject contracts are excluded, the witness says that 38.5 percent of the delivery volume was priced above an initial price of 16.58 cents per Mcf (14.65 psia) or 17 cents per Mcf (15.025 psia). In point of fact, however, two sales in 1959 and one in 1962 out of a total of six in 1959, 1960 and 1962, account for 35.509 percent of the volume and the remaining four sales account for a mere 3.008 percent of the volume. It is pertinent to observe in respect to the sales in question that the small volumes commanded the same price as the large volumes. Moreover, the delivery volumes concerning which the witness generalizes relate not to the five-year period but to three years or less (specifically from August 5, 1959 to October 1, 1960, inclusive, and from October 4, 1962 to December 6, 1962).

---

[8] Unless otherwise stated the price is at 14.65 psia.

In arriving at a recommended in-line price the witness included in his array five of the nine sales consolidated in this proceeding. To include such sales is "circulatory and 'begs the issue' ". The witness also recommends a price as high or higher than the highest contract prices of gas sold in interstate commerce in Wyoming, but the Commission has held that a price "* * * is not in line as of a given time if it is the highest price or in the highest group of prices theretofore paid." *Continental Oil Company, et al.*, 27 FPC 96, 102. The backbone of the witness' recommendation consists of the ten contracts executed between July 5, 1959 and February 12, 1963 at initial base prices of between 15.60 and 17.50 cents per Mcf at 14.65 psia but none of these contracts were permanently certificated by the Commission at an initial price of more than 15 cents per Mcf at 14.65 psia, and as already indicated permanently certificated sales are to be preferred over temporary sales in determining an in-line price if there are sufficient sales and substantial volumes so as to provide a sound basis for determining such price.

When the actual delivery volumes of gas under the subject Atlantic sale (CI63-376), however, are considered and this sale in addition to those of Martha Featherstone (CI64-591) and W. S. Kilroy (CI63-434) are compared with those relied upon by Dr. Garfield (schedule 3), it is apparent that favorable and substantial volumes of gas were moved under the latter contracts for a legitimate comparison.

Another witness of the producers, one who is responsible for the negotiation and administration of all contracts for the sale and purchase of natural gas for The Atlantic Refining Company, also testified in respect to Atlantic's contract of July 30, 1962, which is in issue. He stated that the sale of gas from the Riverton Dome Field was commenced in 1952, that the Northern Utilities Company was the only company purchasing gas in that area, and that Atlantic then made short-term successive one-year contracts. He indicated that after negotiations on the July 30, 1962 sale had begun several other purchasers became interested but that the contract was executed in a buyers' market. He contended that the 1962 contract contained special features in respect to volume, pressure, central point delivery, and content, making it exceptionally favorable to the buyer. He testified that because of the extremely low temperatures in the area during the winter months, the purchaser, Montana-Dakota Utilities Co., insisted upon gas having a low water content (no more than five pounds per million cubic feet of gas). The witness testified further that the performance by Atlantic of the special services called for by the contract were estimated to cost more than 2 cents per Mcf. In support of his contention he referred to, *Panhandle Eastern Pipe Line Company, et al.*, 27 FPC 35, 45 (1962) issued by the Commission a few months before the Atlantic contract was executed.

In the *Panhandle* case the Commission stated:

> There is no question but that the gathering, dehydration and compression services which Shell proposes to render at Elk City are beneficial and required in the public interest; and that if Shell were to sell this gas to Panhandle at the wellhead without these services, it would be necessary for Panhandle to install its own facilities to gather, dehydrate and compress the gas, with a resulting increase in cost to Panhandle's jurisdictional customers. Under these circumstances, and where, as here, the 15-cent area ceiling price is based on a prevailing practice of making sales at the wellhead, Shell should be permitted to recover as part of its initial price so much of its cost of gathering, dehydration and compression as may be properly allocable to the sale of gas to Panhandle.

Atlantic says that producer sales in Wyoming normally provide for delivery at the wellhead and quotes language from the Commission's Opinion in *Standard Oil Company of California*, 27 FPC 1153, 1157 (1962), as authority, "This 15.384-cent gas is gas well gas of pipeline quality, delivered at pressures up to 860 psig at the wellhead." We do not agree with Atlantic's contention. In the passage quoted, the Commission was referring to the ceiling price of gas in Wyoming not to the prevailing practice of making sales at the wellhead. Indeed, in the *Standard Oil Company* case the Commission limited the Panhandle decision to gas produced from an area where the buyer normally performs special service functions. In the recent decision of *Edwin L. Cox, et al.*, Docket No. CI61-153, *et al.*, Opinion No. 446, November 17, 1964, 32 FPC 1301 at p. 1307 the Commission also limited the Panhandle Opinion and stated, "As a general rule the in-line price is the price applicable at the point of delivery negotiated at arm's-length between the parties and no extra allowance is in order for services performed by the producer beyond the wellhead necessary in effecting deliveries under the contract. Thus, the fact that a producer may be required to compress and dehydrate his gas or transport it in order to make a sale does not necessarily justify a higher price for that gas in an in-line proceeding." In the instant case, the evidence does not indicate any normal practice in Wyoming that the buyers or pipeline companies buy gas undehydrated and uncompressed at the wellhead. In fact the producers principal witness testified in respect to 58 contracts listed in his exhibit that 28 provide for delivery at the wellhead, and the remainder provide for central point (including plant outlet) deliveries such as provided in Atlantic's contract.

As already indicated, the witness testified that the sales contract of July 30, 1962, was executed in a buyers' market. The contract does not disclose that Atlantic proposes to construct any additional properties or service facilities. The unique or favorable features urged by Atlantic as setting the contract apart appear to have been an integral part of the contract and conditional to the sale. But aside from the evidence of record, the Commission has heretofore expressed the same view in the *Standard Oil* case, *supra*, at page 1159 where it stated:

> * * * Futhermore, a review of the contracts which the Commission has approved in connection with sales in Wyoming, Colorado and Utah, reveals no consistent pattern with respect to dehydration and compression which would indicate that pipeline buyers in the area normally buy gas undehydrated and uncompressed at the wellhead. On the contrary, the record shows a number of contracts which require the producers to dehydrate their gas to meet the quality conditions for delivery under their contracts. At the same time, there is nothing in other contracts, not requiring dehydration, which would suggest that the gas delivered without dehydration is of any lesser quality with respect to entrained water than the gas which is delivered after dehydration. As for compression, we have already noted that the Wyoming ceiling, which is the in-line price governing the present sales, is actually based on sales at the wellhead of gas at 860 psig, a pressure sufficiently high to permit delivery into the buyer's pipeline without additional compression. There is no question but that the producers in Wyoming are not permitted an allowance over the ceiling price because their gas has a wellhead pressure which eliminates the need for the buyer to compress the gas at the point of delivery, * * *"

When this case was appealed, the Court of Appeals stated, "We also have serious doubts as to whether any of the costs or delivery service urged by the petitioner to sustain the initial price of 18.5 cents are relevant at all in determining the in-line price in a section 7 proceeding * * *," and held that the Commission was not required "* * * to consider the exploration and drilling costs or the cost of delivery services in arriving at the in-line price in a certificate proceeding. The consideration of these matters may properly be left to a section 4 proceeding." *California Oil Company,* Western Division* v. *Federal Power Commission*, 315 F. 2d 652, 660 (1963). Accordingly, in view of the facts of record, it is concluded that there is no justification for any incremental allowance to cover special services performed by Atlantic beyond the wellhead.

Assuming that the testimony in reference to gathering, compression, dehydration and market trends were relevant in the instant case, the Commission has established specific restrictions upon any allowance in price by reason of "premium features." Thus in *Amerada Petroleum Corporation, et al.*, Docket No. CI62-1544, *et al.*, Opinion No. 422-A, May 27, 1964, 31 FPC 1315 at p. 1318 the Commission said: "Compression of the gas where necessary to enable its entry into the pipeline and dehydration for removal of excess water content are normal requirements imposed on producers and cannot be considered a premium feature of exceptional benefit to either the pipeline or the Consumer." In *Superior Oil Company*, Docket No. G-6067, Opinion No. 437, July 23, 1964, 32 FPC 241 at p. 243 the Commission held that, "An area in-line price is applicable to sales of gas by a producer throughout the area * * * The fact that it is necessary for a producer to transport its gas to a pipeline in order to make a sale does not justify a higher price for the gas in an in-line proceeding." And in *El Paso Natural Gas Company, et al.*, Docket No. CP60-72, *et al.*, Opinion No. 358, June 11, 1962, 27 FPC 1134 at p. 1138 the Commission said that "it is impossible to draw any easy conclusions as to what particular trends may mean in terms of price." Considering the record in this proceeding it is found that the evidence is insufficient to indicate any premium features of objectively measurable value.

The Staff witness testified that he had extracted data from producers rate schedules, related certificate applications, and other reports filed with the Commission and that he had prepared two exhibits (Exs. 2 and 3), based on this data. In preparing his exhibits he utilized 1963 volumes. Based on these exhibits he recommended an in-line price for producer sales of gas in Wyoming of 15 cents per Mcf at 15.025 psia "for the period prior to 1959," and a price of 15.38 cents per Mcf for the period subsequent thereto both preceding and following September 28, 1960, the date of the Statement of General Policy No. 61-1. In arriving at his recommendations, the witness relied upon permanently certificated sales. He also testified that the quality and delivery requirements of the proposed sales were reasonably comparable to the certificated sales at the 15 and 15.38 cent level in Wyoming.

The Staff witness included in Exhibit No. 2 all permanently certificated sales in Wyoming from 1942 to 1964, inclusive. His exhibit lists among others 14 sales for the year 1949, 13 for 1953, 14 for 1956 and large delivery volumes under these contracts in 1963. His exhibits reveal that during the period between September 28, 1960 and December 31, 1963, there were 12 permanently certificated sales in Wyoming at 15.38 cents per Mcf at 15.025 psia and that this constituted 42.85 percent of the number of sales during the period. The actual annual volumes of gas delivered under these contracts in 1963 at this price amounted to 6,188,560 Mcf or 45.79 percent. For the period of January 1, 1959 through September 28, 1960, 50 percent of the sales and 88.26 percent of the volumes were permanently certificated at 15.38 cents per Mcf. During this period there were, however, only eight sales. When the entire period of certificated sales in

---

*The California Oil Company is the successor in interest to the Standard Oil Company of California.

Wyoming is considered (1942–1964), the witness indicated that 36 percent of the sales were made at either 15 or 15.38 cents per Mcf at 15.025 psia and included about 68 percent of the actual delivery volumes. The sales price and delivery volumes not contemporaneous with the subject sales are of little relevance. It will be observed that when the sales during the early years are put on one side, particularly preceding 1953, more than 42 percent of the sales were made at 15 and 15.38 cents per Mcf at 15.025 psia and that more than 80 percent of the delivery volumes were made at this price level. During the period 1959 to 1963, approximately 66 percent of the sales were made at 15 or 15.38 cents per Mcf at 15.025 psia and extremely large delivery volumes were made at this level.

In its brief, counsel for Atlantic points particularly to the 1962 Wyoming sales as being significant since Atlantic's contract was executed in that year. There, it is stated that Dr. Garfield's study shows that the weighted average price for all 1962 contracts was 16.95 cents per Mcf, a mere 0.5 mills less than 17 cents per Mcf. And examination of Exhibit 1 reveals that Dr. Garfield lists 12 sales for the year 1962. This list includes two of the subject sales (Kilroy and Atlantic) at proposed prices of 16 and 16.58 cents per Mcf, respectively. These two sales account for a combined annual delivery volume of 8,114.4 MMcf out of the total 1962 sales of 18,017.6 MMcf. The witness also included in the 1962 list two other sales by Kerr-McGee and Pan American (Docket Nos. CI64–277 and CI63–867) both at a proposed initial price of 17.50 cents per Mcf. These sales account for a combined annual delivery volume of 7,740 MMcf. However, since the Kerr-McGee application was returned to the applicant on July 1, 1964 and the Pan American application was rejected on July 29, 1963, no temporary authorizations have been granted, and no volumes of natural gas are moving in interstate commerce under these contracts. It is clearly evident, therefore, that when these sales, or the two subject sales, or both are eliminated, the witness' weighted average price for the year 1962 is considerably reduced—eliminating the four sales reduces the volume to 2,163.2 MMcf and the weighted average price to 13.045 cents per Mcf at 14.65 psia.

Even if the testimony of the producer's witnesses as to a recommended in-line price is not entirely unacceptable, the recommendation is supported by a more limited number of sales, smaller volumes, and more significantly sales not permanently certificated. In view of this and previous precedents, the in-line price found herein must be based chiefly on permanently certificated sales. When resort is made to such sales the preponderance of evidence indicates both from the point of view of the number of sales and delivery volumes of gas moving in interstate commerce in Wyoming contemporaneous with applicable subject sales in this proceeding that a price not in excess of 15.384 cents per Mcf at 15.025 psia (or 15 cents at 14.65 psia) would be in-line and it is so found.

FINDINGS AND CONCLUSIONS

Upon consideration of the record, the briefs, and arguments of counsel, it is found and concluded, in addition to the findings and conclusions heretofore stated that:

(1) Each of the applicants in Docket Nos. CI63–434, CI63–576 and G–18884 is presently a natural-gas company within the meaning of the Natural Gas Act, or will be engaged in the sale of natural gas in interstate commerce for resale for ultimate consumption, subject to the jurisdiction of the Commission, and therefore, will be a natural-gas company within the meaning of said Act upon the commencement of the service under the respective authorizations granted hereinafter.

(2) The sales of natural gas proposed to be made by the applicants referred to in paragraph (1) will be made in interstate commerce, subject to the jurisdiction of the Commission, and such sales by the respective applicants, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The applicants referred to in paragraph (1) are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The sales of natural gas as proposed by each of the applicants referred to in paragraph (1) together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor are required by the public convenience and necessity and a certificate authorizing the same should issue to each of them upon the terms and conditions of the order herein, which terms and conditions are required by the public convenience and necessity.

(5) The application for a certificate of public convenience and necessity in Docket No. CI64-591 should be dismissed.

(6) It is appropriate and in the public interest in carrying out the provision of the Natural Gas Act that refunds be required, as ordered below, in Docket No. G-18884.

ORDER

WHEREFORE, *it is ordered*, subject to review by the Commission on appeal, or review on its own motion, as provided in its Rules of Practice and Procedure that:

(A) A certificate of public convenience and necessity is hereby issued to the applicants in Docket Nos. CI63-434, CI63-576 and G-18884 for the sale of natural gas in interstate commerce for resale as proposed in their applications, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor upon the terms and conditions of this order.

(B) The certificates issued herein are not transferable and shall be effective only so long as each of said applicants continue the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(C) The certificates issued to the applicants in paragraph (A) hereof are hereby expressly conditioned so that the total initial price, including all reimbursements and charges, and regardless of delivery pressure, shall be no greater than 15.384 cents per Mcf at 15.025 psia from the date of the issuance of this order until such prices may be lawfully changed in the manner provided in the Natural Gas Act.

(D) The certificates issued herein are granted upon the further express condition that the allowance of the take-or-pay for provisions in the applicants' contracts is subject to the Commission's ultimate disposition with respect to such provisions in the rule-making proceeding in Docket No. R-199. Upon the establishment, by regulation or policy statement, of a general policy governing such provisions in producer contracts, the applicants shall within 30 days file amended rate schedules in conformity therewith, acceptable to the Commission. The producers shall not be required to file take-or-pay provisions for less than 80 percent of the annual contract quantities. Any charges or modifications to be made in accordance with this paragraph shall be prospective only.

(E) Within 30 days from the date of issuance of this order, each applicant referred to in paragraph (A) above shall file supplements to their presently filed rate schedules reflecting the conditioned price as the initial price in lieu of the initial price provided in the contract; provided that the notice provisions of Section 154.94(b) and the detailed submittal provisions of Section 154.94(f) of the Commission's Regulations under the Natural Gas Act are waived insofar as they apply to the reductions in rates hereby ordered.

(F) The applicants in Docket No. G–18884, Graham B. Morrison and Glen W. Pryor, Trustees, shall, within 60 days of the date upon which this order shall become effective, refund to the pipeline purchaser, with interest, a sum equal to the difference between the price charged to and collected from such purchaser from and after January 1, 1964, and the price of 15.384 cents per Mcf as conditioned herein. The interest charge specified herein shall be calculated at the rate of 7 percent per annum until full refund has been made.

(G) Mountain States Drilling Company, the predecessor in interest in Docket No. G–18884, shall, within 60 days of the date upon which this order shall become effective, refund to the pipeline purchaser, with interest, a sum equal to the difference between the price charged to and collected from such purchaser from August 12, 1959, to January 1, 1964, and the price of 15.384 cents per Mcf as provided herein. The interest charge specified herein shall be calculated at the rate of 6 percent per annum for all gas paid for prior to March 1, 1960, and at 7 percent per annum thereafter, until full refund has been made.

(H) Within 10 days of the date of the refund provided in paragraphs (F) and (G) above, Graham B. Morrison and Glen W. Pryor, Trustees, and Mountain States Drilling Company shall each file with the Commission a duly certified statement, in triplicate, showing the amount of the refund, its manner of computation, the interest payments related thereto, and a statement from the purchaser acknowledging receipt thereof.

(I) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or Part 154 of the Commission's Regulations under said Act. Such grant is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the applicants. Further, the action in this proceeding shall not foreclose or prejudice any further proceedings or objections by the Commission relating to the operation of any price or related provision in the gas purchase contracts here involved.

(J) The application filed in Docket No. CI64–591 is hereby dismissed.

HARRY C. SHRIVER,
Presiding Examiner.

SCHEDULE 1

APPENDIX A

DOCKET No. CI64–25, *et al.*

Proposed sales consolidated in this proceeding

(Contract Provisions of Natural Gas Sales, Wyoming)

Line number	Certificate docket number	Seller	Buyer	Rate schedule number	Date of contract	Term (years or date)	Location	
							County	Field
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1 2 3	CI64–25	Gulf Oil Corp	Kansas-Nebraska Natural Gas Co. Inc.	----------	4- 1-63	LL	Fremont	Dolls Hill.
4 5 6	CI64–591	Martha Featherstone	Colorado Interstate Gas Co.	2	2- 8-63	20	Sweetwater	Patrick Draw Area.
7 8 9	CI63–576	The Atlantic Refining Co	Montana-Dakota Utilities Co.	277	7-30-62	20	Fremont	Riverton Dome.
10 11 12	CI61–419	Pan American Petroleum Corp	El Paso Natural Gas Co.	289	8-15-60	20	Sublette	Chimney Butte Unit.
13 14 15 16	G–18884	Graham B. Morrison and Glenn W. Pryor, Trustees for Richard Stoll Shannon III, et al.	El Paso Natural Gas Co.	1	5-27-59	20	Sublette	Hogsback Unit.
17 18 19	G–20104	Belco Petroleum Corp	El Paso Natural Gas Co.	5	9- 3-59	20	Sublette	Big Piney.
20 21 22	CI63–434	W.S. Kilroy (Operator), et al	Colorado Interstate Gas Co.	2	8-10-62	20	Sweetwater	Table Rock.
23 24 25	G–19589 [9]	Belco Petroleum Corp	El Paso Natural Gas Co.	1	[11] 7-24-53	20	Sublette and Lincoln	Big Piney.
26 27 28	G–19589 [9]	Belco Petroleum Corp	El Paso Natural Gas Co.	2	[11] 6- 8-56	20	Sublette and Lincoln	Big Piney.
29 30 31 32 33 34 35 36 37	G–19591 [10]	Belco Petroleum Corp	El Paso Natural Gas Co.	8	[12] 8-26-55	20	Sublette	Big Piney.

See footnotes at end of table.

SCHEDULE 1

APPENDIX A—Continued

DOCKET No. CI64–25, *et al*—Continued

Proposed sales consolidated in this proceeding—Continued

Line number	Certificate docket number	Delivery point	Maximum delivery pressure (psig)	Quality provisions					Take or pay Yes (Y) or No (N)	Rates			Price escalations				First month's production
				Heating value (BTU/CF)		Allowed sulphur (BR/100 CF)		Water content # per MCF		Initial		Conditioned initial price (¢/MCF @15.025 psia)	Periodic		Other		
				Gas reject below	Price adjust below	Total sulphur	H_2S			Base (¢/MCF @15.025 psia)	Total including tax and other reimbursements (¢/MCF @15.025 psia)		Amount (¢/MCF @15.025 psia)	Period (Years)	Redetermination Next date	Favored nations Yes(Y) or No(N)	Estimated from billing statement (MCF @15.025 psia)
	(1)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)	(20)	(21)	(22)	(23)	(24)
1	CI64–25	W	1,000	950		10	1		Y	[1] 16.41	[1] 16.41		1	5			1,463
2																	
3																	
4	CI64–591	T	800	975		20	1		N	[1] 16.41	[1] 16.41		1	5			1,138
5																	
6																	
7	CI63–576	F	850	950	950	20	.25	5	Y	[1] 17.0	[1] 17.0	[2] 15.384	1	5			620,000
8																	
9																	
10	CI61–419	W	([3] [4])	985	985	20	.25		Y	[1] [4] 17.5	[1] [4] 17.5	[2] 15.384	1	5	7– 1–67		6,337
11																	
12																	
13	G–18884	W	[3] 500	950	950	20	1		Y	[1] [4] 17.5	[1] [4] 17.5	([5])	1	5	5–15–67		22,512
14																	
15																	
16																	
17	G–20104	W	[3] 500	950	950	20	1		Y	[1] [4] 17.5	[1] [4] 17.5	[2] 15.384	1	5	7– 1–67		45,000
18																	
19																	
20	CI63–434	F	1,000	1,000		20	1		Y	[1] 16.41	[1] 16.41	[2] 15.384	1	5			39,294
21																	
22																	

23	G-19589 [8]	W	[9] 500	950	950	20	1		Y	[1] 15.0	[1,5] 15.0	[7] 15.384	1	5			115,000
24										[6] 16.0	[6] 16.0						
25																	
26	G-19589 [8]	W	[9] 500	950	950	20	1		Y	[1,5] 15.0	[1,5] 15.0	[7] 15.384	1	5			115,000
27										[6] 16.0	[6] 16.0						
28																	
29	G-19591 [10]	W	[9] 500	950	950	20	1		Y	[1,5] 15.0	[1,5] 15.0	[7] 15.384	1	5			315,000
30										[6] 16.0	[6] 16.0						
31																	
32																	
33																	
34																	
35																	
36																	
37																	

APPENDIX A

DOCKET No. CI64-25, *et al.*

Schedule 1 Footnotes

[1] Contract rate.

[2] Conditioned temporary rate.

[3] No maximum. Minimum 500 psig prior to July 1, 1970, and 250 psig thereafter.

[4] 1.0¢ additional if pressure is 860 psig or greater.

[5] Temporary conditioned to refunding any amount in excess of amount resulting from rate finally determined to be proper in Docket No. G-18884.

[6] 16.0¢ if pressure is 860 psig or greater.

[7] Conditioned rate for gas at pressure in excess of 800 psig.

[8] Docket covers additional acreage supplements to certificate issued in Docket No. G-10207.

[9] 500 psig for first 10 years and 250 psig thereafter.

[10] Docket covers additional acreage supplements to certificate issued in Docket No. G-10208.

[11] Proposed sales pertain to additional acreage agreements dated: 12-12-59, 2-15-60, 9-28-60, 2-13-61 and 6-14-61.

[12] Proposed sales pertain to additional acreage agreements dated: 2-13-61 and 4-4-63.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

MARTHA FEATHERSTONE, DOCKET NO. CI65-757

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 25, 1965)

On February 1, 1965, Martha Featherstone (Applicant) filed in Docket No. CI65-757 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity to sell gas to Colorado Interstate Gas Company from acreage in the Patrick Draw area, Sweetwater County, Wyoming. The application supersedes a prior application in Docket No. CI64-591 which proposed a sale to the same buyer and under the same contract but at a higher initial price.

The application in Docket No. CI64-591 was consolidated into the proceeding in lead Docket No. CI64-25, which proceeding was the subject of an Examiner's decision rendered therein on January 22, 1965, *Gulf Oil Corporation, et al.*, Docket No. CI64-25, *et al.* By order issued concurrently herewith, *sub nom. Martha Featherstone, et al.*, Docket No. CI64-591, *et al.*, *supra*, p. 621, the Examiner's decision has been adopted as the decision of the Commission. The Examiner dismissed the application in Docket No. CI64-591 because of the applicant's failure to appear or to submit the necessary evidence.

The sale proposed at Docket No. CI65-757 will be rendered at a rate of 15.384 cents per Mcf at 15.025 psia in lieu of the initial contractually proposed rate of 16.4096 cents per Mcf. The rate currently proposed is equal to the initial service guideline ceiling rate for the area involved and is also equal to the in-line rate found by the Examiner and approved in our order.

Concurrently with the subject application Applicant submitted a copy of the related contract which will hereinafter be accepted for filing as Applicant's FPC gas rate schedule No. 2, together with supplements No. 1, 2 and 3.[1]

Appropriate notice of the application in Docket No. CI65-757 has been given, including publication in the Federal Register on February 16, 1965, 30 F.R. 2114. No petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 19, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The sale of natural gas hereinbefore described, as more fully described in the application herein, will be made in interstate commerce, subject to the jurisdiction of the Commission, and such sale by Applicant, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The sale of natural gas by Applicant, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary

---

[1] Supplement No. 1 is contract No. 276-B dated September 18, 1963. Supplements No. 2 and 3 are, respectively, contract No. 276-E and 276-F, both dated November 8, 1963.

therefor, is required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the related contract submitted by Applicant, together with supplements No. 1, 2 and 3, be accepted for filing and be designated as Applicant's FPC gas rate schedule.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued, upon the terms and conditions of this order, authorizing the sale by Applicant of natural gas in interstate commerce for resale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary for such sale, all as hereinbefore described and as more fully described in the application and exhibits in this proceeding.

(B) The certificate granted in paragraph (A) above is not transferable and shall be effective only so long as Applicant continues the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(C) The certificate issued herein is expressly conditioned to prohibit a total initial price, including all reimbursements and charges, and regardless of delivery pressure, greater than 15.384 cents per Mcf at 15.025 psia from the date of issuance of this order and until such price may be lawfully changed in the manner provided in the Natural Gas Act.

(D) The grant of the certificate issued in paragraph (A) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Applicant. Further, our action in this proceeding shall not foreclose or prejudice any further proceedings or objections by the Commission relating to the operation of any price or related provision in the gas purchase contract here involved. Nor shall the grant of the certificate aforesaid for service to the particular customer involved imply approval of all of the terms of the contract, particularly as to the cessation of service upon termination of said contract, as provided by Section 7(b) of the Natural Gas Act.

(E) The related contract dated February 8, 1963, submitted by Applicant is accepted for filing and designated as Martha Featherstone FPC Gas Rate Schedule No. 2, together with Supplements No. 1, 2 and 3, to be effective on the date of initial delivery.

(F) Upon the commencement of deliveries applicant shall inform the Commission within 10 days of such fact, together with the date thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

MARATHON OIL COMPANY, DOCKET NO. RI64-549

ORDER ACCEPTING OFFER OF SETTLEMENT REQUIRING FILING OF NOTICE OF CHANGE, CONTRACT AMENDMENT, REFUNDS, AND TERMINATING PROCEEDINGS

(Issued March 25, 1965)

On February 8, 1965, Marathon Oil Company (Marathon) submitted an offer of settlement in this proceeding pursuant to Section 1.18(e) of the Commission's

Rules of Practice and Procedure. The offer involves a proposed increased rate for a sale of natural gas made to Transcontinental Gas Pipe Line Corporation (Transco) by Marathon under its FPC Gas Rate Schedule No. 10 in the North Markham-North Bay City Field, Matagorda County, Texas (Texas Railroad Commission District No. 3). The proposed increased rate was suspended by order of the Commission for the statutory period, and was made effective, subject to refund, by Marathon on July 2, 1964.

In its offer, Marathon proposes a settlement rate of 15.5¢ per Mcf of natural gas at 14.65 psia., inclusive of tax reimbursement and dehydration charge reimbursement, for the remaining life of the contract. Marathon also proposes to eliminate the favored-nation and periodic price escalation provisions from the contract and to extend the contract term three years to December 24, 1973. Additionally, Marathon proposes to dedicate to the contract approximately 120 million Mcf of new reserves of gas without modification of Transco's existing obligations in regard to maximum and minimum takes, and the take-or-pay provisions under the contract. Marathon will refund all amounts collected, subject to refund, under the subject rate schedule in excess of the settlement rate. Its revenues will be decreased approximately $36,000 annually below the presently effective rate revenue, and it will refund approximately $25,000, exclusive of interest. No protests or objections have been filed to the proposed settlement.

Marathon's proposal is identical to one which we considered and approved by order issued October 1, 1964 in *Sun Oil Company*, Docket No. G–8288, *et al.*, 32 FPC 894, for sales of natural gas to the same purchaser in the same field. Here, as there, we find that the circumstances permit an exception to the applicable area ceiling and we, therefore, find Marathon's settlement rate of 15.5¢ per Mcf to be proper and approve the same.

For all of the reasons set forth in our order in *Humble Oil & Refining Company*, Docket Nos. G–9287 and G–9288, *et al.*, 32 FPC 49 (order issued July 8, 1964) we shall require Marathon to retain the amounts of refund ordered herein until further order directing the nature of their disposition, and also to submit within 45 days of this order to the Commission and to Transco a detailed report setting the amount of refund related to the subject rate schedule, the volume of gas sold thereunder and the period covered. We shall also by separate action direct Transco within ten days from the receipt of such report, to submit a report of its own setting forth whether it intends to pass on all or part of such refund amounts to its jurisdictional customers and the names of such customers and amounts of refund each would receive, or, if it claims the right to retain any portion of the refunds, a brief statement as to the legal or equitable basis for such claim. In the event such report indicates that the refunds will flow through to ultimate consumers or distribution companies not subject to the Commission's jurisdiction, the Commission will authorize the release of such refund sums by Marathon (unless a state regulatory authority after notification of the sum to be made available to a company subject to its regulatory jurisdiction asks us to defer releasing the funds until it can determine their ultimate disposition). In the event Transco indicates that it is asserting a claim to retain substantial refund sums the Commission will by further order prescribe the procedure for determining the relative rights to such funds.

The Commission finds:

The proposed settlement of the above-designated proceeding, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Marathon on February 8, 1965, is in the public interest and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed with the Commission by Marathon on February 8, 1965, is hereby approved in accordance with the provisions of this order.

(B) Marathon shall file, within 30 days from the date of issuance of this order, a notice of change in rate under its FPC Gas Rate Schedule No. 10 providing for the 15.5¢ per Mcf rate specified in its offer of settlement, and an executed contractual amendment to said schedule eliminating the favored nation and periodic price escalation provisions therefrom, and extending the contract term to December 24, 1973. The notice of change and the contractual amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Marathon shall file, within 30 days from the date of issuance of this order, appropriate certificate and rate schedule filings, in accordance with the Commission's Regulation under the Natural Gas Act, to reflect the dedication of the additional reserves more fully described in its offer of settlement.

(D) Marathon shall compute the difference between the rates collected subject to refund and the related settlement rate for the period from July 2, 1964 to the date of this order, together with interest as specified by order of the Commission in this docket to the date of this order. Marathon shall within 45 days from the date of this order submit a report to the Commission, and serve a copy on Transco, setting out the amount of refunds related to the subject rate schedule (showing separately the principal and applicable interest), the bases used for such determination, the period covered, and a letter from Transco agreeing to the correctness of such amounts.

(E) Marathon shall retain the amounts shown in the report required under paragraph (D) above, subject to further order of the Commission directing the disposition of those amounts.

(F) If Marathon elects to commingle these retained refunds with its general assets and use them for its corporate purposes, it shall pay interest thereon at the rate of 6% per annum on all funds thus available from May 7, 1965 to the date on which they are paid over to the person ultimately determined to be entitled thereto in a final order of the Commission.

(G) If Marathon elects to deposit the retained refunds in a special escrow account, Marathon shall tender for filing on or before May 7, 1965, an executed Escrow Agreement, conditioned as set out below, accompanied by certificate showing service of a copy thereof upon each of its jurisdictional customers. Unless notified to the contrary by the Secretary within 30 days from the date of filing thereof, the Escrow Agreement shall be deemed to be satisfactory and to have been accepted for filing. The Escrow Agreement shall be entered into between Marathon and any bank or trust company used as a depositor for funds of the United States Government and the agreement shall be conditioned as follows:

(1) Marathon, the bank or trust company, and the successors and assigns of each, shall be held and formally bound unto the Federal Power Commission for the use and benefit of those entitled thereto, with respect to all amounts and the interest thereon deposited in a special escrow account, subject to such agreement, and such bank or trust company shall be bound to pay over to such person or persons as may be identified and designated by final order of the Commission and in such manner as may be therein specified, all or any portion of such deposits and the interest thereon.

(2) The bank or trust company may invest and reinvest such deposits in any short-term indebtedness of the United States or any agency thereof or in any form of obligation guaranteed by the United States which is, respectively, payable

within 120 days as the said bank or trust company in the exercise of its sound discretion may select.

(3) Such bank or trust company shall be liable only for such interest as the invested funds described in Paragraph (2) above will earn and no other interest may be collected from it.

(4) Such bank or trust company shall be entitled to such compensation as is fair, reasonable and customary for its services as such, which compensation shall be paid out of the escrow account to such bank or trust company. Said bank or trust company shall likewise be entitled to reimbursement for its reasonable expenses necessarily incurred in the administration of this escrow account, which reimbursement shall be made out of the escrow account.

(5) Such bank or trust company shall report to the Secretary quarterly, certifying the amount deposited in the bank or trust company for the quarterly period.

(H) If Marathon elects not to commingle the retained refund with its general assets, or to deposit such funds in a special escrow account, it may deposit, within 45 days from the date of this order, such funds in savings accounts, not to exceed $10,000 each, in any banks or savings and loan associations where deposits are insured by the Federal Deposit Insurance Corporation, with all interest thereon to be credited to the savings accounts. If Marathon elects so to do, it shall file a statement with the Secretary of the Commission of its election, and such statement shall include the names and addresses of the banks or savings and loan associations.

(I) Upon notification by the Secretary of the Commission that Marathon has complied with the terms and conditions of this order, the rate and charge of 15.5¢ per Mcf at 14.65 psia., specified in its offer of settlement, shall be effective as of the date of issuance of this order, and the above-designated proceeding shall be deemed terminated insofar as it relates to the sale of natural gas to Transco under Marathon's FPC Gas Rate Schedule No. 10, without further order of the Commission.

(J) The acceptance by the Commission of Marathon's offer of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Marathon, including area rate or other similar proceedings.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

BORDER PIPE LINE COMPANY AND AMERICAN SMELTING AND REFINING COMPANY, DOCKET NO. G-228

ORDER FURTHER AMENDING ORDER AUTHORIZING THE EXPORTATION OF NATURAL GAS

(Issued March 26, 1965)

On December 23, 1964, Border Pipe Line Company (Border) and American Smelting and Refining Company (American) collectively referred to as Petitioners, filed in Docket No. G-228 a joint application pursuant to Sections 3 and 16 of the Natural Gas Act, for a further order amending the export authorization heretofore granted Petitioners in Docket No. G-228, pursuant to Section 3 of the Act, by order issued on October 10, 1942 (3 FPC 827), as amended by orders issued on November 4, 1942 (3 FPC 859), July 11, 1950 (9 FPC 910), May 10, 1956 (15 FPC 1387), and on March 25, 1960 (23 FPC 529). The joint application to amend filed December 23, 1964 by Petitioners in Docket No. G-228 seeks an extension through March 26, 1970 of the authorization heretofore granted them to export up to 14,000 Mcf of natural gas per day to the Republic of Mexico in accordance with and pursuant to the terms of their agreement of July 5, 1949, as amended, for use by American in supplying the requirements of its subsidiary, Compania Minera Asarco, S. A., all as more fully set forth in the application to amend.

Petitioners present authorization permitting export of up to 14,000 Mcf per day will expire on March 26, 1965, under the terms of the Commission's order issued March 25, 1960, which amended Paragraph (C) of the order of the Commission issued October 10, 1942.

Presidential permits were issued, simultaneously and separately, to Border and American on September 29, 1942, authorizing the construction, operation and maintenance of export facilities in this subject docket at the international boundary. Border sells the gas to American on the United States side of the boundary and American transports the gas into Mexico for delivery to its Mexican subsidiary, for use in industrial purposes.

The aforesaid order of October 10, 1942, as amended, grants authority to export pursuant to the terms of an agreement dated July 5, 1949, between Border and American. The parties by agreement dated March 12, 1959, amended the original contract so as to grant to American the option to extend the term thereof for a further period of five years beginning March 27, 1965, through and including March 26, 1970. American exercised its option to so extend the terms of the 1949 contract, as amended, to March 26, 1970 by agreement dated December 1, 1964.

Border is now purchasing gas for export from producers in the Aguilares, Cabezon, El Ranchito, Leyendecker, Reiser and Retamia fields, in Webb and Zapata Counties, Texas. Border has entered into contracts for additional supplies of gas available to be delivered to American. The contract date, price, producer supplying the additional volumes, and the fields from which the gas is to be produced are listed as follows:

Field	Producer	Contract date	Purchaser cost of gas per Mcf @ 14.65 psia
			Cents
Cabezon	Sun Oil Co	Dec. 10, 1959	14.5
El Rancnito	Allen and Kircher	Apr. 27, 1961	10
Leyendecker	Blanco Oil Co	June 22, 1964	12
Retamia	Fairway Operating Co., Inc.	Sept. 23, 1960	10
Various Webb and Zapata Counties Tex.	Delhi Gas Pipeline Corp.[1]	June 29, 1964	16

[1] Delhi Gas Pipeline Corporation has a firm obligation to deliver to Border the quantities of gas specified in the contract, namely a daily volume increasing from 1,000 Mcf to 6,000 Mcf in the fourth year and 7,000 Mcf daily thereafter until March 27, 1970.

Border estimates that as of January 1, 1964, the remaining natural gas reserves in the Aguilares, Leyendecker, Cabezon, El Ranchito, Reiser and Retamia fields, and covered by Border's contracts with the producers of such gas is 28,585,000 Mcf of natural gas measured at 14.65 psia.

Due notice of the filing of the application to further amend and opportunity for hearing thereon has been given by publication in the Federal Register on January 14, 1965 (30 F.R. 506). No petition to intervene, notice of intervention, or protest to the granting of the application has been filed.

The Commission finds:

The grant of the relief or extension of authorization requested in the aforesaid joint application of December 23, 1964, will not be inconsistent with the public interest and, good cause having been shown for the granting of the same, it is necessary or appropriate to carry out the provisions of the Natural Gas Act that the aforesaid order of October 10, 1942, as amended November 4, 1942, July 11, 1950, May 10, 1956 and March 25, 1960, be further amended as hereinafter ordered.

The Commission orders:

(A) Paragraph (C) of the Commission's order of October 10, 1942, as specifically amended November 4, 1942, July 11, 1950, May 10, 1956 and March 25, 1960, is hereby further amended so as to extend for a five year period commencing March 27, 1965 and ending March 26, 1970 the authorization heretofore granted Border Pipe Line Company and American Smelting and Refining Company for the exportation of natural gas to the Republic of Mexico in accordance with and pursuant to the terms of their agreement of July 5, 1949, as amended, for use by American in supplying the requirements of its subsidiary, Compania Minera Asarco, S.A.

(B) In all other respects the terms, conditions and authorizations set forth in the order of October 10, 1942, as amended, shall remain in full force and effect, and the grant of the instant authorization, together with the exercise of the rights therein granted, shall be fully subject thereto.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

ALGONQUIN GAS TRANSMISSION COMPANY, DOCKET NO. CP64-6

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 29, 1965)

On January 12, 1965, Algonquin Gas Transmission Company (Applicant), filed in Docket No. CP64-6 an application to amend the certificate of public convenience and necessity issued by the Commission on December 19, 1963, 30 FPC 1559, and amended October 28, 1964, 32 FPC 1229, which, among other things, authorized Applicant in Docket No. CP64-6 to sell to Cambridge Gas Company (Cambridge), commencing November 1, 1965, a total maximum daily quantity of 19,275 Mcf of natural gas under Applicant's Rate Schedule No. F-1.

By the instant application, Applicant seeks amendment of the aforementioned certificate, as amended in Docket No. CP64-6 to reflect an increase in maximum daily quantity to Cambridge from 19,275 Mcf to 21,000 Mcf, per agreement between the parties dated January 7, 1965.

The application states that the proposed increased sales to Cambridge will be made from Applicant's presently unallocated capacity and supply, and consequently no additional facilities or supply will be required.

Due notice of the filing of the petition to amend and opportunity for hearing thereon has been given by publication in the Federal Register on January 23, 1965 (30 F.R. 766). No protest or petition to intervene or request for hearing has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the certificate issued by the Commission on December 19, 1963 and amended October 28, 1964. in Docket No. CP64-6 be further amended as hereinafter ordered.

The Commission orders:

(A) The certificate of public convenience and necessity issued to Applicant in the Commission order of December 19, 1963 and amended October 28, 1964, be, and the same is hereby further amended to increase the maximum daily quantity of natural gas to Cambridge from 19,275 Mcf to 21,000 Mcf, in accordance with the agreement dated January 7, 1965, between the parties as hereinbefore described and as more particularly set forth in the aforementioned application to amend which is on file with the Commission.

(B) In all other respects the certificate, as amended in Docket No. CP64-6 shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

AMERADA PETROLEUM CORPORATION, ET AL., DOCKET NO. CI62-1544, ET AL.

ORDER

(Issued March 29, 1965)*

There is presently before us a certificate proceeding under Section 7 of the Natural Gas Act which originally involved 35 separate applications by 26 producers for initial sales of natural gas by the producers, individually or as operator, for sales in Texas Railroad Commission District No. 4 to various pipelines for resale in interstate commerce at prices ranging from 15.944¢ per Mcf to 19.795¢ per Mcf. The Commission issued temporary certificates at prices not exceeding 18¢. In eight of the dockets, refund conditions were included in the temporary authorizations which would require the producers to refund to their purchasers any amount collected in excess of the initial price to be determined in the permanent certificate. In the remaining dockets, no refund conditions were imposed.

By our Opinion No. 422, issued March 23, 1964, and Opinion No. 422-A issued May 27, 1964, 31 FPC 623, 1315, we granted permanent certificates of public convenience and necessity to the applicants at an initial price of 16¢ per Mcf, which we found to be the "in-line" price for Texas District No. 4 at the time the sales contracts were executed. In those dockets where the producers had commenced deliveries pursuant to temporary certificates containing refund conditions, we ordered proper refunds to be made. In the remaining dockets where the producers were selling gas at prices in excess of 16¢ per Mcf under temporary certificates void of any refund obligation, we deferred our decision on the question of whether refunds should be ordered.[1]

The refund issue in this proceeding arises out of the decision of the Court of Appeals for the District of Columbia[2] on appeal of our Opinion in *Skelly Oil Co., et al.*[3] In the *Skelly* case we concluded that producers operating under unconditioned temporary certificates should not be required to make refunds of amounts collected in excess of the determined "in-line" price. The Court, however, held that the power to order refunds does not depend upon an explicit refund provision in the temporary authorizations. While petitions for *certiorari* by the Supreme Court were denied in the *Skelly* case, the issue has again been raised in petitions for *certiorari* filed in *Callery Properties, Inc.* v. *F.P.C.*, 335 F. 2d 1004 (CA5-1964). On March 8, 1965, the Supreme Court granted *certiorari* in the *Callery* case.

---

*Reconsideration denied by order issued May 26, 1965, 33 FPC 1124.

[1] Paragraph (G) of the order accompanying Opinion No. 422.

[2] *P.S.C. of New York* v. *F.P.C.*, 329 F. 2d 242 (CADC), cert. denied 377 U.S. 963.

[3] Opinion No. 362, issued August 30, 1962, 28 FPC 401, modified on rehearing by Opinion No. 362-A, 28 FPC 1065.

Since it now appears that the refund issue will be reviewed and clarified by the Supreme Court we conclude that further action in this proceeding should be deferred until after the Court has issued a decision in the *Callery* case.

Accordingly, the Commission orders:

Further proceedings in the above entitled case shall be deferred pending a final decision by the Supreme Court in the *Callery* case, or until further order of the Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

COOS-CURRY ELECTRIC COOPERATIVE, INC., PROJECT NO. 2319

ORDER EXTENDING PERIOD OF PRELIMINARY PERMIT

(March 29, 1965)

Application was filed on January 25, 1965 by Coos-Curry Electric Cooperative, Inc., of Coquille, Oregon, permittee for proposed Project No. 2319, for a one-year extension of the preliminary permit issued for a period of two years, effective as of April 1, 1963 and terminating March 31, 1965.

The permittee advises that while under the permit it has undertaken preliminary investigations concerning the potential markets for that portion of the project output in excess of its own needs, consummation of the treaty between the United States and Canada, providing for development of Upper Columbia River storage reservoirs and the marketing of the Canadian Entitlement power in the United States, has had a marked effect on the over all power market in the area. The permittee states that many negotiations now in progress concerning the sale of Canadian Entitlement power and other power which may become available as a result of the treaty have made it impossible for the permittee to conclude its power market studies within the time allowed by the preliminary permit.

An extension of the period of the permit for the requested additional year would not exceed the three year limit fixed by Section 5 of the Federal Power Act.

The Commission finds:

It is not inconsistent with the public interest to extend the permit as hereinafter provided.

The Commission orders:

The period of the preliminary permit for proposed Project No. 2319 is hereby extended to and including March 31, 1966.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NOS. CP64-184 AND CP64-239

ORDER AMENDING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 29, 1965)

On February 4, 1965, El Paso Natural Gas Company (Applicant), El Paso, Texas, filed in Docket Nos. CP64-184 and CP64-239 an application to amend the orders of the Commission issued in said dockets of April 20, 1964, and June 11, 1964, 31 FPC 959, 1535, respectively. The order issued in Docket No. CP64–184 authorized, among other things, the construction and operation of the Fort Wingate Meter Station which was proposed to be utilized for the sale and delivery of natural gas to Southern Union Gas Company for resale to Fort Wingate Ordnance Depot located in McKinley County, New Mexico. The order issued in Docket No. CP64–239 authorized, among other things, the Skyline Cafe Tap which was proposed to be utilized for the sale and delivery of natural gas to Washington Natural Gas Company for resale to Skyline Cafe, located near Chehalis, Washington.

In both instances Applicant seeks to have the respective certificates amended to delete therefrom the authorization to construct and operate the above described facilities for the reason that these facilities have not been constructed and they are not now proposed to be constructed.

Due notice of the filing of the petition to amend and opportunity for hearing thereon has been given by publication in the Federal Register on February 17, 1965 (30 F.R. 2166). No protest, petition to intervene, notice of intervention, or request for hearing has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the certificates of public convenience and necessity heretofore issued in Docket Nos. CP64–184 and CP64–239 be amended as hereinafter ordered.

The Commission orders:

(A) The certificate of public convenience and necessity issued to El Paso Natural Gas Company in the Commission order of April 20, 1964, in Docket No. CP64–184 be and the same is hereby amended by deleting therefrom the authorization for the construction and operation of the Fort Wingate Ordnance Meter Station, which is more fully described in the application which is on file with the Commission.

(B) The certificate of public convenience and necessity issued to El Paso Natural Gas Company in the Commission order of June 11, 1964, in Docket No. CP64–239 be and the same is hereby amended by deleting therefrom the authorization for the construction and operation of the Skyline Cafe Tap, which is more fully described in the application which is on file with the Commission.

(C) In all other respects the orders in Docket Nos. CP64–184 and CP64–239 shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

LATERAL GAS PIPELINE COMPANY, DOCKET NO. CP65–204

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 29, 1965)

On December 31, 1964, Lateral Gas Pipeline Company (Applicant) filed in Docket No. CP65–204 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities in order to transport natural gas for the account of Iowa Electric Light & Power Company (Iowa Electric), all as more fully set forth in the application in this proceeding.

Applicant proposes to transport gas purchased by Iowa Electric from Natural Gas Pipeline Company of America from certain points on Natural's transmission system in Iowa and deliver such gas to Iowa Electric for distribution by the latter in the communities of Marengo, Kalona, Lacona, North English, South English and Williamsburg, all in Iowa.

Specifically, Applicant proposes to construct and operate approximately 30 miles of 4-inch and 4 miles of 2-inch pipeline in Keokuk and Iowa Counties, Iowa; approximately 8.33 miles of 2-inch pipeline in Washington County, Iowa and approximately 2.25 miles of 2-inch pipeline in Warren County, Iowa.

The total estimated cost of the proposed facilities is $599,524, which cost will be financed with funds on hand, funds obtained by sale of Applicant's stock to Iowa Electric and/or temporary advances from Iowa Electric.

The gas proposed to be transported is from allocations which Natural is presently obligated to deliver to Iowa Electric.

Applicant will perform the proposed transportation service in accordance with its FPC Gas Tariff, Original Volume No. 1.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 26, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Lateral Gas Pipeline Company, an Iowa corporation having its principal place of business in the City of Cedar Rapids, Iowa, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of July 12, 1954, in Docket No. G–2318 (13 FPC 1184).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed transportation and delivery of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Lateral Gas Pipeline Company, to construct and operate the proposed facilities and to transport and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the transportation and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 9 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

THE MONTANA POWER COMPANY, PROJECT NO. 5

ORDER FIXING HEARING

(Issued March 29, 1965)*

The Confederated Salish and Kootenai Tribes of the Flathead Reservation, organized on October 28, 1935, under the Indian Reorganization Act of June 18, 1934, (Confederated Tribes), filed a petition for readjustment of annual charges under subsection 10(e) of the Federal Power Act[1] for use of tribal lands by The Montana Power Company (the Company) for operation of its Kerr Project No. 5 on the Flathead River in Montana.

Action on the petition of the Confederated Tribes was deferred pending a decision in a then pending proceeding to fix annual charges for a third generating unit which had been added at the Kerr Project (22 FPC 502; 25 FPC 221). The Commission's orders were affirmed in *The Montana Power Company* v. *F.P.C.*, 298 F. 2d 335, decided on January 25, 1962.

Subsequent efforts by both the Confederated Tribes and the Company to arrive at an agreement on readjustment of annual charges have failed because of differences which are best illustrated by their statements of position and replies thereto submitted under dates of April 5, and May 7, and April 3, May 8, and July 24, 1964.

Subsection 10(e), as amended, provides that the Commission may readjust annual charges after 20 years of operation after notice and opportunity for hearing. At the time the license for Project No. 5 was issued subsection 10(e) provided that the Commission might readjust annual charges for 20 years of operation in a manner to be described in each license. That manner is set forth in Article 30(D):

---

*See order issued July 7, 1965, denying petition to vacate hearing, etc., 34 FPC 12.

[1] The pertinent provisions of subsection 10(e) involved read as follows:

* * * Provided, that when licenses are issued involving the use of Government dams or other structures owned by the United States or tribal lands embraced within Indian reservations the Commission shall, subject to the approval of the Secretary of the Interior in the case of such dams or structures in reclamation projects and, in case of such tribal lands, subject to the approval of the Indian tribe having jurisdiction of such lands as provided in Section 16 of the Act of June 18, 1934 (48 Stat. 984), fix a reasonable annual charge for the use thereof, and such charges may with like approval be readjusted by the Commission at the end of twenty years after the project is available for service and at periods of not less than ten years thereafter *upon notice and opportunity for hearing.*

NOTE.—The italic has been supplied to indicate the language which was inserted in this section by the amendment of 1935 in place of: *"in a manner to be described in each license."*

Article 30(D)

* * * * * *

> The annual charges payable under this license may be readjusted at the end of twenty (20) years after the beginning of operation under this license and at periods of not less than ten (10) years thereafter by mutual agreement between the Commission and the Licensee, with the approval of the Secretary of the Interior. In case the Licensee, the Commission, and the Secretary of the Interior cannot agree upon readjustment of such charges, it is hereby agreed that the fixing of readjusted charges shall be submitted to arbitration in the manner provided for in "The United States Arbitration Act." (U.S.C., Title 9), such readjusted annual charges to be reasonable charges fixed upon the basis provided in Section 5 of Regulation 14 of the Commission, to wit, upon the commercial value of the tribal lands involved, for the most profitable purposes for which suitable, including power development.

Essentially this Article provided for readjustment by agreement between the Commission and the Licensee with the approval of the Secretary of the Interior, or by arbitration if the Commission, the Secretary, and the Licensee could not agree. In 1935, Section 10(e) was amended to give the Commission authority to make such readjustments as may be appropriate.

The Confederated Tribes contend that readjustment is necessary and that it should be made by the Commission pursuant to Section 10(e) of the Act, as amended in 1935. The Company contends readjustment is unnecessary, but if it were necessary, it must be made in accordance with Article 30(D) of the license. We do not find it necessary to determine at this time the question of whether any readjusted charges are to be finally determined pursuant to the 1935 amendment to Section 10(e) or pursuant to the manner described in Article 30(D) of the license. Under either situation, the Commission would have to determine whether it believes any readjustment is appropriate and this determination, we believe, can be made only after an evidentiary hearing.

We shall, therefore set this matter for hearing to determine (1) whether readjustment is necessary; (2) if so, what the readjustment should be; and (3) whether any such readjustment should be ordered by the Commission in this proceeding pursuant to the provisions of Section 10(e) of the Act as amended. Since the latter question appears to be solely a matter of law, we do not contemplate that any evidence will be introduced thereon but the parties may, of course, argue the matter to the examiner and the Commission by way of a brief.

The Commission finds:

It is appropriate and in the public interest to hold a public hearing, as hereinafter provided, respecting: (1) whether annual charges for the occupancy and use of lands of the Confederated Tribes by Project No. 5 of the Company should be readjusted; (2) if such charges should be readjusted, the amount of the readjusted charges; and (3) whether any such readjusted charges should be ordered by the Commission in this proceeding pursuant to the provisions of Section 10(e) of the Act as amended.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by the Federal Power Act, particularly Sections 10(e) and 308 thereof, and the Commission's Rules of Practice and Procedure, a public hearing shall be held on July 20, 1965 at 10 a.m. (EDST) in a hearing room of the Federal Power Commission, 441 G Street, N.W., Washington, D.C., respecting the matters involved and issues presented in the above finding.

(B) The following procedure is prescribed for this proceeding:

(1) The Confederated Tribes and the Company shall file by May 25, 1965 with the Secretary of the Commission an original and ten copies of all their testimony including qualifications of witness, and exhibits to be presented in their direct cases;

(2) Commission Staff shall file by June 25, 1965 with the Secretary, an original and ten copies of all of its direct testimony and exhibits, including qualifications of witnesses;

(3) All motions to strike shall be filed with the Presiding Examiner by July 5, 1965 with replies to such motions to be filed by July 13, 1965;

(4) All of the testimony, except exhibits, shall be in question and answer form;

(5) No exhibits, except those of which official notice may properly be taken, shall contain narrative material other than brief explanatory notes;

(6) Any party submitting more than one exhibit shall enclose a cover sheet listing the title of each exhibit in the sequence they are to be marked for identification;

(7) The Presiding Examiner will specify the order of cross-examination and time to be permitted for preparation of rebuttal evidence.

(C) The Commission's Rules of Practice and Procedure shall apply in this proceeding except to the extent that they are modified or supplemented herein.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SIERRA PACIFIC POWER COMPANY AND SIERRA NEVADA POWER COMPANY, DOCKET NO. E-7204

ORDER AUTHORIZING MERGER AND CONSOLIDATION OF FACILITIES

(Issued March 29, 1965)

On January 25, 1965, Sierra Pacific Power Company (Sierra-Maine) and Sierra Nevada Power Company (Sierra-Nevada) filed a joint application, as subsequently amended, with the Federal Power Commission, for an order, pursuant to Section 203 of the Federal Power Act authorizing Sierra-Maine to merge into Sierra-Nevada and an order authorizing Sierra-Nevada to acquire all of the assets and assume all of the liabilities of Sierra-Maine and to issue its own Common and Preferred Stock in connection with the merger.

Sierra-Maine is a corporation organized under the laws of the State of Maine with its principal business office at Reno, Nevada and is engaged principally in the utility business in 11 counties in west-central Nevada and 7 counties in the adjoining eastern section of California.

Sierra-Nevada is a corporation organized under the laws of the State of Nevada with its principal business office at Reno, Nevada and has been formed solely for the purpose of providing a means whereby the corporate domicile of Sierra-Maine could be transferred from Maine to Nevada.

According to the application, on the effective date of the merger, Sierra-Maine will cease to exist as a corporate entity and Sierra-Nevada will succeed to all of Sierra-Maine's licenses, franchises, permits and corporate assets. Also on the effective date of the merger, Sierra-Nevada will issue one share of Preferred Stock for each share of Preferred Stock of Sierra-Maine then outstanding and two shares of Common Stock for each share of Common Stock of Sierra-Maine then outstanding, except those shares dissenting, and Sierra-Nevada will assume and become liable for all debts and obligations of Sierra-Maine including those incurred or to be incurred by the issuance of unsecured short-term Promissory Notes in a principal amount not to exceed $12,000,000 outstanding at any one time, as authorized by Commission order issued December 22, 1964, in Docket No. E-7195, 32 FPC 1496. At the time of this merger, the name of the surviving corporation will be changed from Sierra-Nevada to the original name, Sierra Pacific Power Company.

On the effective date of the proposed merger, Sierra-Nevada will succeed to the business of Sierra-Maine and to the ownership and operation of the latter's facilities. In a separate order issued concurrently herewith, *Sierra Pacific Power Company and Sierra Nevada Power Company, Project No. 743, et al., infra,* p. 652, the transfer of the licenses for certain of these facilities from Sierra-Maine to Sierra-Nevada is approved.

According to the application, Sierra-Nevada will issue two shares of Common Stock for each outstanding Common share of Sierra-Maine. After the merger, Sierra-Nevada will have outstanding Common Stock of 3,791,486 shares, $3.75 par, instead of Sierra-Maine's presently outstanding Common Stock of 1,895,743 shares, $3.75 par. The issuance of the additional shares will be recorded by a debit of $7,109,036 to Premium on Capital Stock-Common Stock, and a credit of the same amount to Common Stock.

In the merger, Sierra-Nevada will succeed to all assets and will assume all liabilities of Sierra-Maine. Therefore, on the books of Sierra-Nevada as of the effective date of the merger, the same amounts for assets and other debits and the same amounts for liabilities and other credits will be recorded as are recorded on the books of Sierra-Maine as of the same date, with the exception of the above mentioned transfer from Premium on Capital Stock to Common Stock for issuance of the additional shares of Common Stock.

According to the application, the change of the corporate domicile of Sierra-Maine from Maine to Nevada will be compatible with the public interest and in the best interest of Sierra-Maine as the reasons for the incorporation of Sierra-Maine in the State of Maine in 1912 no longer prevail. The Applicants represent that such a change of corporate domicile from Maine to Nevada will permit Sierra-Maine to operate under the modern and flexible corporation laws of the State of Nevada where its principal office and business and operations are, for the most part, maintained and carried on, will result in tax, legal and regulatory expense savings of an appreciable amount and will improve business relations in its service area.

If the merger becomes effective, Sierra-Nevada will be a public utility organized and operating in a state under the laws of which its security issues and its assumptions of liability with the exception of short term promissory notes maturing within less than twelve months, are regulated by a state regulatory body, the Nevada Public Service Commission. After the merger, such issuances of securities or assumptions of liabilities by the Company will not be subject to authorization by the Commission under Section 204(f) of the Federal Power Act.

Written notice of the application has been given to the Public Service Commission of Nevada and the Public Utilities Commission of California, and to the Governor of each of those States. Notice has also been given by publication in the Federal Register on February 9, 1965 (29 F.R. 1826), stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest on or before February 23, 1965 with the Federal Power Commission, Washington, D.C. 20426. No protest, petition, or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Sierra-Maine, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued May 14, 1959, *In the Matter of Sierra Pacific Power Company*, Docket No. E-6873 (21 FPC 684).

(2) Sierra-Nevada, a corporation, will become the owner and operator of all Sierra-Maine's facilities at the moment of its succession to Sierra-Maine and at that time will become a public utility within the meaning of Section 203 of the Federal Power Act.

(3) By the proposed transaction, as described above, Sierra-Maine will dispose of the whole of its facilities subject to the jurisdiction of the Commission within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(4) The proposed merger and consolidation of facilities as recited above upon the terms and conditions set forth in the application, subject to the provisions of this order, will be consistent with the public interest as expressed in Section 203 of the Federal Power Act for the reasons stated above.

(5) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The proposed disposition by Sierra-Maine of the whole of its facilities subject to the jurisdiction of the Commission, as described above, is authorized and approved upon the terms and conditions and for the purposes set forth in the application, subject to the provisions of this order.

(B) Sierra-Maine and Sierra-Nevada shall record the proposed transactions and the facilities and properties described above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) The authority granted to Sierra-Maine by Commission order issued on December 22, 1964 in Docket No. E-7195 to issue Promissory Notes in the aggregate principal amount of $12,000,000 is hereby extended to Sierra-Nevada.

(D) This authorization shall expire unless the transactions herein authorized and approved are consummated within 60 days from the date of issuance of this order.

(E) This authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost, or any other matter whatsoever now pending or which may come before this Commission or any other regulatory body and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SIERRA PACIFIC POWER COMPANY AND SIERRA NEVADA POWER COMPANY, PROJECT NOS. 743, 938, 958, 959, 978, 982, 1037, 1191, 1262 AND 1446

ORDER APPROVING TRANSFER OF LICENSES

(Issued March 29, 1965)

Joint application was filed on February 25, 1965, pursuant to Section 8 of the Federal Power Act (Act) by Sierra Pacific Power Company, a Maine corporation, and Sierra Nevada Power Company, a Nevada corporation, for Commission approval of transfer of the licenses for the above-designated transmission line projects from the former to the latter. The lines are located either in the State of California or the State of Nevada. The Joint Applicants request that any Commission approval of transfer of the licenses be made effective as of the date of conveyance of the project properties. Commission authorization of a merger of Sierra Pacific into Sierra Nevada has been granted by our order of even issuance date in Docket No. E-7204 *supra*, p. 649. Following the merger, Sierra Nevada, a Nevada corporation, will change its name back to Sierra Pacific Power Company.

The licenses for transmission line Projects Nos. 743, 958, 959, 978, 982 and 1037 waive the provisions of Section 8 of the Act which requires Commission approval of the transfer of the license. Consequently, no Commission approval of the transfer of those licenses is required.

According to our staff study of the ten transmission lines covered in the application, the lines are in fact distribution lines and are not primary lines or parts of a "project" as defined in Section 3(11) of the Federal Power Act. However, inasmuch as the licensee of record is to be merged into the proposed transferee at an early date, we are approving the transfer of the licenses which do not waive Section 8 of the Act, designated as Project Nos. 938, 1191, 1262 and 1446, subject to the requirement that the transferee obtain authority from the appropriate Government agency for the continued occupancy by these lines of the Government lands involved, and upon obtaining such authority to then apply for surrender of its licenses for these lines.

The Commission finds:

(1) Public notice of the filing of the application in Docket No. E-7204 has been given which recited the proposed transfer of the licenses held by Sierra Pacific Power Company.

(2) The proposed transferee is a corporation organized under the laws of the State of Nevada, is domesticated in the States of Nevada and California, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws as necessary for the operation of Project Nos. 938, 1191, 1262 and 1446.

(3) Approval of transfer, upon compliance with the conditions set forth herein, of the licenses for the projects designated in finding (2) above to the proposed transferee will not be inconsistent with the public interest.

The Commission orders:

(A) The transfer of the licenses for the projects designated in finding (2) above from Sierra Pacific Power Company to Sierra Nevada Power Company is hereby approved, effective as of the effective date of the merger referred to above, subject to Section 9.3 of the Commission's Regulations under the Federal Power Act, and subject to the further condition that the net investment in the projects shall not be increased on account of the transfer; provided that the transferee shall be subject to the conditions and obligations of the licenses and to all of the provisions of the Act to the same extent as though it were the original licensee for the projects. Our approval respecting the licenses for these projects is subject to the requirement that the transferee obtain authority from the appropriate Government agency for the continued occupancy by the lines of the Government lands involved, and upon obtaining such authority to then apply for surrender of its licenses for those lines.

(B) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Federal Power Act, and failure to file such an application shall constitute acceptance of the licenses for the projects designated in finding (2) above by Sierra Nevada Power Company. In acknowledgment of the acceptance of such licenses, this instrument shall be signed for Sierra Nevada Power Company, the new licensee, and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CITY OF TACOMA, WASHINGTON, PROJECT NO. 1862

ORDER APPROVING REVISED PROJECT EXHIBIT

(Issued March 29, 1965)

On November 9, 1964, the Department of Public Utilities, on behalf of the City of Tacoma, Washington, licensee for Project No. 1862, filed a letter requesting Commission approval of certain changes proposed in one of the Exhibit K drawings on file with the Commission.

The proposed changes involve a sale of a tract of approximately 7.2 acres of land and the lease of an adjacent tract of approximately 12.6 acres within the project boundary to provide for development of a commercial resort area on Alder Reservoir. Improvements of a permanent nature would be located on the land to be purchased. All of the lands would be open to the public, with some uses on a fee basis. The development would provide for the reconstruction and relocation of an existing public boat livery near the dam, damaged by fire in 1946. Public boat launching, picnicking, camping and sanitary facilities are located within about 2 miles of the proposed land sale and lease, on the shore of Alder Reservoir.

The development as proposed would provide greater public enjoyment of outdoor recreational opportunity of Alder Reservoir. Adequate lands for future development are available, including lands administered by the U.S. Forest Service and the State of Washington as well as lands owned by the licensee within the project boundary. The project lands proposed to be sold lie in Section 11, T. 15 N., R. 4 E., Willamette Meridian, Pierce County, Washington. The maximum normal elevation of Alder Reservoir is 1200 feet MSL, and the parcel proposed to be sold lies above the 1220 foot elevation and is not necessary in connection with the operation of the project.

The Commission finds:

It will not be inconsistent with the public interest to change the project boundary by eliminating therefrom the aforesaid tract of approximately 7.2 acres of lands and to approve the lease of other project lands by approving the revised Exhibit K drawing as hereinafter provided.

The Commission orders:

Exhibit K (FPC No. 1862-39), revised by our staff to show the removal of the aforesaid tract of approximately 7.2 acres of lands from Project No. 1862 and the lease of the tract of approximately 12.6 acres of project lands, are hereby approved, provided that the licensee file a copy of the lease with the Commission and reserves in such lease all rights of the licensee, its successors and assigns to use such leased lands for project purposes as contemplated in the license for the project.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

VANCEBURG ELECTRIC LIGHT, HEAT AND POWER SYSTEM, VANCEBURG, KENTUCKY v. KENTUCKY POWER COMPANY AND AMERICAN ELECTRIC POWER COMPANY, INC., DOCKET NO. E-7184

ORDER GRANTING PETITION TO INTERVENE AND DENYING APPLICATION FOR RECONSIDERATION

(Issued March 29, 1965)

This order denies an "Application for Rehearing" of our March 4, 1965 order *supra*, p. 406, filed by Respondents, Kentucky Power Company and American Electric Power Company. Our order of March 4, 1965 denied Respondents' motions to dismiss and designated for hearing the complaint against Respondents filed by Vanceburg Electric Light, Heat & Power System. We are also granting the petition for leave to intervene filed by the Fleming-Mason Rural Electric Cooperative on March 22, 1965.

On March 19, 1965, Respondents filed with the Commission an "Application for Rehearing" directed to our order of March 4, 1965. Respondents' "Application for Rehearing" is being considered as a motion for reconsideration since our order of March 4, 1965, was not a final order of the Commission from which rehearing lies (see F.P.C. Rules of Practice and Procedure, § 1.34; *F.P.C.* v. *Metropolitan Edison Co.*, 304 U.S. 375).

Our order of March 4, 1965 ordered a hearing on the issues raised in Vanceburg's complaint and Respondents' answer thereto, including, *inter alia*, questions of rate discrimination, reasonableness of Kentucky Power Company's wholesale rates, jurisdiction, appropriate terms and conditions for service by Kentucky Power, and an alternative request for an order making possible service to Vanceburg from Fleming-Mason. The order also denied motions to dismiss made by Respondents, without prejudice to their renewal at the close of the hearing. We directed in that order that copies of the Complaint and Answer be served upon Fleming-Mason and that Fleming-Mason be offered opportunity to intervene in this proceeding.

On March 22, 1965, Fleming-Mason Rural Electric Cooperative, Flemingsburg, Kentucky, filed with the Commission a petition to intervene in the above-entitled proceeding. Fleming-Mason in its petition states, *inter alia*, that it is willing to interconnect with and sell power to Vanceburg Electric Light, Heat & Power System as requested in Vanceburg's complaint filed with the Commission October 1, 1964.

The "Application for Rehearing" raises no issues which were not considered by the Commission prior to the issuance of the March 4, 1965 order or which upon present consideration would lead us to deviate from the determination made therein that the matter should be designated for hearing. The Commission did not "overlook" the status of Vanceburg, as a municipality, to file a complaint under § 202(b) of the Act. We decided that issue in *Shrewsbury Municipal Light Department* v. *New England Power Company*, order of May 2, 1963; Opinion No. 438, issued July 27, 1964, 32 FPC 373. See *United States* v. *Public Utilities Commission of California*, 345 U.S. 295, 312–316. We believe that the complaint and answer, properly construed, raised the question of the rate level of Kentucky Power's sales to Vanceburg, but in any event it was within our power under Section 206 of the Act, in designating the complaint for hearing to put this question into issue. In short, the Complaint and Answer raise questions relating to issues of discrimination and rate level, the facts of which should properly be developed in the course of a hearing. Accordingly, dismissal of the complaint and termination of the proceeding at this time would be inappropriate.

The Commission further finds:

(1) It is appropriate for purposes of the Federal Power Act that Fleming-Mason be permitted to intervene in this proceeding.

(2) The "Application for Rehearing" filed by Respondents advances nothing which would cause us to reconsider the conclusion reached in our order of March 4, 1965, that Vanceburg's complaint against Respondents in this proceeding should be set for hearing.

The Commission orders:

(A) Fleming-Mason Rural Electric Cooperative is hereby permitted to intervene in this proceeding subject to the Rules and Regulations of the Commission: *Provided, however*, That the participation shall be limited to matters affecting asserted rights and interests as specifically set forth in the petition to intervene: and *Provided, further*, That the admission of Fleming-Mason shall not be construed as recognition by the Commission that Fleming-Mason might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(B) The motion filed by Respondents for reconsideration of the Commission's order issued March 4, 1965, in this proceeding is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

AMERICAN LOUISIANA PIPE LINE COMPANY, DOCKET NO. CP65-190; MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP65-191

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 30, 1965)

On December 24, 1964, American Louisiana Pipe Line Company (American Louisiana) filed in Docket No. CP65-190 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of natural gas facilities and the sale of natural gas, all as more fully set forth in the application on file with the Commission.

On December 24, 1964, Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) filed in Docket No. CP65-191 an application, as supplemented on January 25, 1965, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of natural gas facilities, all as more fully set forth in the application on file with the Commission.

American Louisiana proposes to: (1) construct and operate approximately 293 miles of 30-inch pipeline, looping portions of its main line in Louisiana, Mississippi, Arkansas, Tennessee, Kentucky and Indiana; (2) install additional compressor units totaling 12,800 horsepower, at compressor station Nos. 1, 4, 7 and 10, located in the States of Louisiana, Mississippi, Kentucky and Indiana, respectively; (3) construct and operate approximately 7.4 miles of 20-inch gas supply line together with a meter station, in St. Mary Parish, Louisiana.

Michigan Wisconsin seeks authorization to construct and operate (1) approximately 10.4 miles of 30-inch loop line between its Stations 10 and Wisconsin "A", in the State of Illinois; (2) approximately 14.7 miles of 30-inch loop line between its Stations Wisconsin "A" and Wisconsin "B", in the State of Illinois; (3) approximately 8.5 miles of 12-inch loop line on Applicant's line extending to Two Rivers, Wisconsin; (4) approximately 3.3 miles of 6-inch loop line on Applicant's line extending to Keokuk, Iowa; and (5) approximately 8.3 miles of 8-inch loop line on Applicant's line extending to Grand Haven, Michigan. Applicant also proposes to install an additional 1,100 horsepower of compression at its Station Wisconsin "B" in the State of Wisconsin.

American Louisiana states that the proposed facilities will provide expansion of the sales capacity of its system by approximately 89,000 Mcf per day, to meet, commencing in the fall of 1965, the increased requirements of its existing customers.

Michigan Wisconsin states that the proposed facilities are required for the expansion of its system capacity by approximately 75,000 Mcf per day, in order to enable it to meet the contract nominations of its customers for their existing markets, commencing September 1, 1965, and to provide reasonable volumes to meet pending and future requests for service to new markets.

The estimated cost of American Louisiana's proposed construction is $37,380,000, and will be financed initially with funds on hand and bank loans, the latter subsequently to be refinanced in major part with long-term debt.

The estimated cost of Michigan Wisconsin's proposed facilities is $4,158,000, and will be financed with funds on hand and funds generated internally.

There is no gas supply problem in either project.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the applications has been filed.

At a hearing on March 26, 1965, the Commission on its own motion received and made a part of the record in these proceedings all evidence, including the applications as supplemented, and exhibits, submitted in support of the authorization sought herein and upon consideration of the record,

The Commission finds:

(1) American Louisiana Pipe Line Company, a Delaware corporation having its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 1, 1954, in Docket No. G–2306, *et al.* (13 FPC 380).

(2) Michigan Wisconsin Pipe Line Company, a Delaware corporation having its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 30, 1946, in Docket No. G–669 (5 FPC 954).

(3) The proposed construction and operation of facilities and sale and exchange of natural gas, as hereinbefore described and as more fully described in the applications, supplement and exhibits in these proceedings, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The aforesaid proposed construction and operation of facilities and sale and exchange of natural gas are required by the public convenience and necessity, and certificates therefor should be issued as hereinafter ordered and conditioned.

(5) American Louisiana and Michigan Wisconsin are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(6) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) Certificates of public convenience and necessity be and the same are hereby issued to American Louisiana and Michigan Wisconsin, authorizing the construction and operation of facilities and the sale of additional quantities of natural gas, as hereinbefore described and as more fully set forth in the applications and supplement in these proceedings, upon the terms and conditions of this order.

(B) The certificates issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon American Louisiana's and Michigan Wisconsin's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation and the transportation of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (B) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 9 months from the date on which this order issues.

(D) This certificate is further conditioned by Michigan Wisconsin's continuing to file the monthly reports in compliance with the Commission's order in Docket No. CP63-230 issued November 12, 1963, 30 FPC 1239, for the contract year commencing September 1, 1965.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP65-120

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 30, 1965)

On November 4, 1964, Tennessee Gas Transmission Company (Applicant) filed in Docket No. CP65-120 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of natural gas facilities and the sale of natural gas, all as more fully set forth in the application on file with the Commission.

Applicant seeks authorization to: (1) construct and operate approximately 64 miles of 36-inch pipeline and approximately 31 miles of 30-inch pipeline, looping portions of its main line in Alabama, Mississippi, New York, Ohio, Pennsylvania, and Tennessee; (2) install a total of 5,000 additional horsepower of compression at its Station Nos. 219, 237 and 261, located at or near Mercer, Pennsylvania; Clifton Springs, New York, and Agawam, Massachusetts, respectively; and (3) replace approximately eight miles of 8-inch lateral line in Massachusetts with eight miles of 12-inch lateral line.

The application states that the proposed facilities will provide Applicant with an additional 47,000 Mcf of annual average day delivery capacity, increasing its system's capacity from 2,924,000 Mcf to 2,971,000 Mcf.

Applicant seeks further authorization for the transportation and sale of additional volumes of natural gas to existing customers, in order to meet the requirements of such customers for the 1965–66 heating season. Additional peak day sales volumes are stated to total 29,638 Mcf. A portion of the additional capacity herein authorized amounting to 9,946 Mcf per day will be utilized by Applicant for the transportation of natural gas to Iroquois Gas Corporation (Iroquois) on a long-term basis commencing with the 1965–66 winter heating season, as authorized by the Commission in Docket No. CP65–93. This transportation of 9,946 Mcf is currently being accomplished by means of the presently available unallocated capacity of Applicant's system. However, this unallocated capacity may not be available for transportation to Iroquois in the 1965–66 winter heating season and thereafter.

The estimated cost of Applicant's proposed facilities is $18,306,000, and will be financed through the sale of bonds, debentures, and preferred stock.

Pennsylvania Gas and Water Company (Penn Gas) by motion filed February 10, 1965, unopposed by Applicant, requested the inclusion herein of the same language as to its claim to remain a purchaser under Applicant's G–4 Rate Schedule as is more particularly set forth in the Commission's order issued July 13, 1964, in Docket No. CP64–165, 32 FPC 112.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 26, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorizations sought herein, and upon consideration of the record, finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of July 12, 1947, in Docket No. G–910 (6 FPC 777).

(2) The proposed construction and operation of facilities and sale and delivery of natural gas, as hereinbefore described and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's

compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Tennessee Gas Transmission Company, authorizing the construction and operation of facilities and the sale and delivery of natural gas, as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particulary the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 9 months from the date on which this order issues.

(D) The certificate issued by paragraph (A) is further conditioned by the following reservations: "the authorization hereinafter granted to Applicant is without prejudice to Penn Gas' claim that it is entitled to remain a purchaser under Applicant's G–4 Rate Schedule and issuance hereinafter of the certificate to the Applicant is not to be interpreted as permanently allocating 9,754 Mcf of Applicant's additional capacity to Penn Gas."

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP65–188

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 31, 1965)

On December 23, 1964, Northern Natural Gas Company (Applicant) filed in Docket No. CP65–188 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of natural gas facilities and the transportation and sale of natural gas in interstate commerce, all as more fully set forth in the application.

Applicant requests authorization to construct and operate 64.8 miles of 30-inch and 24-inch main line loops on portions of its system in Kansas, Nebraska, and Iowa; 8.5 miles of branch lines in Iowa; two measuring and regulating stations in Iowa; and a total of 5,400 horsepower of compression at its Bushton and Mullinville, Kansas compressor stations. The above facilities are requested in order to increase Applicant's system capacity by 47,741 Mcf per day to supply the increased contract demand requirements of its present customers for the 1965-66 heating season. Of the total requested increase of 47,741 Mcf per day in contract demand, 25,741 Mcf is to meet the growth requirements of existing customers, and 22,000 Mcf is for Iowa Public Service Company for resale to

Terra Chemicals International, Inc. for use in the latter's proposed fertilizer plant in Woodbury County, Iowa.

Applicant also requests authorization to discontinue firm deliveries of gas to Minneapolis Gas Company (Minneapolis) for resale to Minneapolis-Moline Company (Moline), and to provide interruptible service instead.[1] There will be no change in Minneapolis' contract demand since the quantity of gas released by Moline will be utilized by Minneapolis for service to its other firm customers.

Total estimated cost of Applicant's proposed construction is $8,100,000, and will be financed by means of cash on hand, reserve accruals, and retained earnings.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 31, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G–280 (3 FPC 967).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed transportation and sales of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and sales of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Applicant's request for discontinuance of firm deliveries and substitution of interruptible deliveries to Minneapolis Gas Company for resale to Minneapolis-Moline Company should be granted.

(6) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Northern Natural Gas Company, to construct and operate the proposed facilities and to transport and sell natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

---

[1] Firm delivery of 623 Mcf of gas per day to Minneapolis for resale to Moline was authorized by Commission order issued May 1, 1959, in Docket No. G–11657, 21 FPC 624.

(B) Applicant's request for discontinuance of firm deliveries and substitution of interruptible deliveries to Minneapolis Gas Company for resale to Minneapolis-Moline Company is hereby granted.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(D) The facilities hereby authorized shall be constructed and placed in actual operation and the sales of natural gas hereby authorized shall be undertaken, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PACIFIC GAS & ELECTRIC COMPANY, PROJECT NO. 2106

ORDER FURTHER AMENDING LICENSE (MAJOR)

(Issued April 1, 1965)

Application was filed on August 14, 1964, by Pacific Gas & Electric Company, licensee for Project No. 2106, for Commission approval of modified plans for the afterbay dam and associated facilities of the Pit No. 7 development of the project. Project No. 2106 is located on the McCloud and Pit Rivers in Shasta County, California, and affects lands of the United States within the Shasta-Trinity National Forest.

The proposed modifications call for: (1) relocation of Pit 7 afterbay dam to a point about 950 feet upstream from the bridge near Fenders Flat, rather than the location previously proposed, about 500 feet downstream from the bridge; (2) changing the design of the dam from a low, slotted concrete gravity overpour dam to a low, rockfill overpour dam with a variable width concrete gravity weir section equipped with three discharge pipes 5 feet in diameter to be used to bypass water during construction; (3) construction of a boat ramp from the dam and an access road to it; and (4) provision for a flat area for recreation purposes at Fenders Flat.

The relocation of the afterbay dam avoids difficulties in diversion during construction, and its revised design permits its construction in sections without the necessity of a diversion tunnel, thus resulting in a savings of cost. The afterbay dam will operate automatically, without any mechanisms, to attenuate the discharge from the Pit No. 7 plant resulting in a relatively slow rise in river stage below it rather than an abrupt rise which would occur without it.

The afterbay dam as now proposed will be located in the headwaters of the U.S. Bureau of Reclamation's Shasta Reservoir and would be subject to being completely submerged by reservoir high water. Therefore, the rockfill portion of the afterbay dam has been designed for such overtopping and also for overtopping when passing large flood flows by providing galvanized steel matting to prevent unraveling. According to the licensee, model tests have confirmed the stability of this type of structure.

Construction of the boat launching ramp downstream from the dam and an access road to it will be a suitable replacement for the gravel bar previously used for this purpose, and will be more desirable and less costly than the ramp near the mouth of Potem Creek and access road to it as prescribed by Article 37 of the license. The U.S. Forest Service has indicated its approval of this improved arrangement.

According to the licensee, the estimated capital cost of the afterbay dam and associated facilities, as now proposed, is $850,000. The estimated capital cost of facilities previously proposed and originally licensed, but trended to present day costs, is $1,050,000. Hence, the proposed changes and modifications will result in an estimated capital cost saving of $200,000. We consider this figure as reasonable.

The Chief of Engineers, Department of the Army, has advised that the plans of the project structure affecting navigation are satisfactory and have been approved pursuant to Section 4(e) of the Federal Power Act.

The Department of Agriculture, through the Forest Service, has advised it has no objection to the proposed change in plan for the Pit No. 7 afterbay dam, and will not interfere or be inconsistent with the purposes for which the Shasta-Trinity National Forest was created or acquired.

The Department of the Interior, in reporting on the application, recommended that the modified plans for the Pit No. 7 afterbay dam be made subject to a condition that the United States Government not be liable for any damages to the licensee's subject project works either during construction or operation due to inundation or backwater from storage in Shasta Reservoir, and that the licensee shall develop and implement adequate measures to prevent water pollution acceptable to the State of California Department of Fish and Game, the U.S. Forest Service, and the Bureau of Sport Fisheries and Wildlife of the Department of the Interior.

Article 32 of the license provides for the prevention of releases of debris and gravel into the McCloud and Pit Rivers during construction of the project. Inasmuch as new Article 50 hereinafter to be included in the license provides for such prevention, Article 32 should be eliminated from the license.

The Commission finds:

(1) Public notice of the application has been given. No protests or petitions to intervene have been received.

(2) The license for Project No. 2106 further amended as hereinafter provided is in the public interest.

(3) Exhibit L-8A (FPC No. 2106-61), filed with the application, conforms to the Commission's rules and regulations and should be approved as part of the license for the project, and Exhibit K-6A (FPC No. 2106-44) and Exhibit L-8 (FPC No. 2106-53), now parts of the license, should be eliminated from the license to the extent they show the Pit No. 7 afterbay dam and reservoir.

The Commission orders:

(A) Exhibit L-8A (FPC No. 2106-61) is hereby approved as part of the license for Project No. 2106, and Exhibit K-6A (FPC No. 2106-44) and Exhibit L-8 (FPC No. 2106-53) are hereby eliminated from the license to the extent indicated in finding (3) above.

(B) The license for Project No. 2106 is hereby further amended, effective as of February 1, 1965, in the following respects:

PARAGRAPH I. Articles 32 and 37 of the license are eliminated therefrom.

PARAGRAPH II. The following new articles are included in the license:

Article 49. The Licensee shall not hold the United States liable for any damage to Pit No. 7 afterbay dam either during construction or operation due to inundation or backwater from storage in Shasta Reservoir.

Article 50. The Licensee shall take special precautions during construction and operation to prevent discharge into the McCloud and Pit Rivers of silt, debris, and other substances harmful to fish and wildlife and their habitats, and prevent to a reasonable extent loss, removal, disturbance, compaction, or shifting of gravel of the McCloud River channel downstream from McCloud Diversion dam except as appropriate for protection or improvement of fish and wildlife habitat; provided, the Licensee shall develop and implement such reasonable measures to prevent stream bank erosion and stream siltation and pollution as may be prescribed by the Commission upon its own motion or upon the recommendation of the State of California Department of Fish and Game, U.S. Forest Service, or Bureau of Sport Fisheries and Wildlife.

(C) This amendment in the manner set out above shall not operate to alter or amend the license in any other respect, and shall not in any way constitute a waiver of any other part, provision or condition of the license.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgment of the acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SOUTHERN CALIFORNIA EDISON COMPANY AND PACIFIC GAS & ELECTRIC COMPANY

ORDER APPROVING HEADWATER BENEFITS SETTLEMENT

(Issued April 1, 1965)

Southern California Edison Company (Edison) on January 14, 1965, requested approval of an agreement with Pacific Gas & Electric Company (Pacific) concerning compensation for headwater benefits in the San Joaquin River basin in California. The Commission, as provided in Section 13.1 of the Regulations under the Federal Power Act, may approve such settlements in lieu of a headwater benefits determination under Section 10(f) of the Federal Power Act (16 U.S.C. 803(f)).

Edison's seven upstream projects, Project Nos. 67, 120, 2017, 2085, 2086, 2174, and 2175, provide headwater benefits to Pacific's Kerckhoff development, Project No. 96. Pursuant to ten headwater benefits determinations, the most recent of which was made on October 5, 1959 (22 FPC 646), Pacific has paid more than $1.2 million for headwater benefits which Edison provided to it from 1923 through December 31, 1953. Pacific also has made annual preliminary payments based on its estimated obligations for benefits which Edison provided to it from January 1, 1954, through December 31, 1963.

By letter dated January 7, 1964, Edison and Pacific entered into the following agreement respecting compensation for headwater benefits:

(a) Edison and Pacific have reviewed the preliminary payments which Pacific has paid to Edison for years 1954 through 1963, which have amounted to a total of $643,514 for such 10-year period, and agree that this amount is mutually satisfactory to them as payment in full for such period.

(b) Edison and Pacific agree that an annual payment of $72,000 by Pacific to Edison for years commencing with 1964 will be mutually satisfactory to them.

(c) Edison and Pacific agree that the annual payment set forth in (b) shall be subject to review every 5 years at the request in writing by either Edison or Pacific of the other in order to provide for revisions that may be appropriate by reason of changes in facilities, costs of interest, depreciation, or maintenance, or in pertinent operating conditions which might result in changes in benefits.

Since this agreement concerns headwater benefits compensation, it may be filed by the parties under Section 13.1 of the Regulations under the Federal Power Act for approval by the Commission.

The Commission finds:

The agreement of January 7, 1964, between Southern California Edison Company and Pacific Gas & Electric Company constitutes an effective and reasonable method for compensating the Southern California Edison Company for benefits received by the Pacific Gas & Electric Company's downstream improvement in the San Joaquin River basin in California.

The Commission orders:

The aforesaid agreement is approved with respect to settlement of headwater benefits under Section 13.1 of the Regulations under the Federal Power Act in lieu of headwater benefits determinations under Section 10(f) of the Federal Power Act until further order of the Commission is required due to changes in conditions.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

LONE STAR GAS COMPANY, DOCKET NO. CP65-235

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 2, 1965)

On February 9, 1965, Lone Star Gas Company (Applicant) filed in Docket No. CP65-235 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 100 feet of 2-inch lateral pipeline extending from its transmission line F to the city gate of Highland Village in Denton County, Texas, in order to provide service to the said town and environs, all as more fully set forth in the application.

Applicant will construct and operate its own distribution system, which during the third year of operation will require estimated annual and peak-day volumes of 11,715 Mcf and 285 Mcf of natural gas, respectively.

Applicant estimates the cost of the pipeline facilities to be $735, the cost of the city gate measuring station to be $3,290, and the cost of the local distribution system to be $32,148, all of which will be financed from working capital.

Applicant has obtained a franchise from Highland Village authorizing it to distribute gas therein. The village is presently without the benefits of natural gas service.

Due notice of the filing of the application was published in the Federal Register on March 11, 1965 (30 F.R. 2418). No protest, petition to intervene, or notice of intervention has been filed in this proceeding.

At a hearing held on April 1, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Lone Star Gas Company, a Texas corporation having its principal place of business in Dallas, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued April 11, 1944, in Docket No. G-442 (4 FPC 565).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, Lone Star Gas Company, authorizing the construction and operation of facilities as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation and the transportation of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. RP65-50

ORDER INSTITUTING INVESTIGATION AND REQUIRING REPORTING OF COST AND REVENUE DATA

(Issued April 2, 1965)*

Natural Gas Pipeline Company of America (Natural) is engaged in the transportation of natural gas in interstate commerce and in the sale for resale of natural gas in interstate commerce for ultimate distribution to the public, and therefore is a natural gas company within the Natural Gas Act.

On the basis of the data available to the Commission, it appears that the rates, charges, or classifications demanded, observed, charged, or collected in connection with the sales or transportation of natural gas by Natural, subject to the jurisdiction of the Commission, and the rules, regulations, practices, and contracts relating thereto, may be unjust, unreasonable, unduly discriminatory or preferential.

The company itself is most familiar with its books and records. It is appropriate, therefore, that Natural prepare and submit a report of its cost and revenue data for calendar year 1964, as hereinafter prescribed. It is not intended that the submittal of cost and revenue data by the company will be a substitute for the investigative responsibility of the staff nor will it preclude staff examination of the books or records of the company to the extent deemed necessary.

The Commission finds:

(1) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act, that an investigation be instituted

---

*See order issued April 30, 1965, denying reconsideration, etc., *infra*, p. 929.

by the Commission, upon its own motion, into and concerning all rates, charges, or classifications demanded, observed, charged, or collected by Natural for or in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, and any rules, regulations, practices, or contracts affecting such rates, charges, or classifications.

(2) It is necessary and appropriate, in order to expedite such investigation that Natural submit the cost and revenue report hereinafter prescribed.

The Commission orders:

(A) Under authority of Sections 4 (a) and (b), 5, 10, 14, 15 and 16 of the Natural Gas Act an investigation of Natural is hereby instituted for the purpose of enabling the Commission to determine whether, with respect to any transportation or sale of natural gas, subject to the jurisdiction of the Commission, made or proposed to be made by Natural, any of the rates, charges, or classifications demanded, observed, charged, or collected, or any rules, regulations, practices, or contracts affecting such rates, charges or classifications, are unjust, unreasonable, unduly discriminatory, or preferential.

(B) On or before April 30, 1965, Natural shall report to the Commission cost and revenue data conforming with subsection (f) of Section 154.63 of the Commission Regulations under the Natural Gas Act (except statements N and P), The data shall utilize calendar year 1964 adjusted for changes in revenues and costs which are known and are measurable with reasonable accuracy at the time of filing and which will become effective within nine months after the base period. The 12 months base period shall be adjusted to eliminate nonrecurring items (except minor amounts so specified), but this shall not preclude Natural from including items clearly designated as such, which, on the basis of existing facts, detailed in the report, it can show will be experienced or from including an appropriate normalizing adjustment, in lieu of a specified nonrecurring item. Working papers prepared in conjunction with the cost and revenue data shall be included in the report submitted and all statements, schedules and working papers shall be prepared in accordance with the classifications provided in the Uniform System of Accounts. All adjustments and estimates shall be explained and the bases and procedures used in the deprivation thereof shall be submitted in detail to permit ready analysis and verification thereof. Ten sets of the cost and revenue data shall be served upon the Commission, and Natural shall simultaneously serve copies of such data upon all of its jurisdictional customers and the State commission of each state in which it does business.

(C) Further orders in this proceeding will specify the dates for any formal hearing under Section 5 of the Natural Gas Act which the Commission on further consideration of the matter deems appropriate and will provide an opportunity for intervention in such hearing by interested parties.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP65-244

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 2, 1965)

On February 18, 1965, Panhandle Eastern Pipe Line Company (Applicant) filed in Docket No. CP65-244 an application pursuant to Section 7(c) of the

Natural Gas Act for a certificate of public convenience and necessity authorizing the construction for a 12-month period and the operation of gas purchase facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

The total cost of the proposed facilities will not exceed a maximum of $5,000,000 and no single project will exceed a cost of $500,000, which costs will be financed from funds on hand.

After due notice no petition to intervene, notice of intervention, or protest to the granting of the application has been received.

At a hearing held on April 1, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of September 23, 1942, in Docket Nos. G–200 and G–207 (3 FPC 273).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the twelve-month period commencing on the date of issuance of this order, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $5,000,000, with no single project to exceed a cost of $500,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Panhandle Eastern Pipe Line Company, to construct during the twelve-month period commencing on the date of issuance of this order, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the twelve-month period commencing on the date of issuance of this order, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $5,000,000, with no single project to exceed a cost of $500,000.

(E) The certificate issued herein shall not be construed as authorizing Applicant to attach new customers or to increase the volume of sales to existing customers.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP65–70

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING WITHDRAWAL OF PETITION FOR LEAVE TO INTERVENE

(Issued April 2, 1965)

On January 22, 1965, Transcontinental Gas Pipe Line Corporation (Applicant) filed in Docket No. CP65–70, an application to amend an order of the Commission issued December 14, 1964, 32 FPC 1420, in Docket No. CP65–70, authorizing among other things the sale of natural gas to Carolina Pipeline Company (Carolina), an annual volume of 2,000,000 Mcf of natural gas under Applicant's Rate Schedule ACQ–2, all as more fully set forth in the application to amend. Applicant seeks authorization to increase the annual contract volume of ACQ or off-peak gas allocated to Carolina to 4,000,000 Mcf to be effective only during the calendar years 1965 and 1966, in lieu of the 2,000,000 Mcf originally authorized in said order of December 14, 1964.

The proposed additional volumes will be in addition to the existing sales being made by Applicant to Carolina under Applicant's FPC Gas Rate Schedules CD–2 and E–2.

Carolina, by letter dated January 6, 1965, requested Applicant to increase the annual contract quantity under Rate Schedule ACK–2 for the calendar years 1965 and 1966 only.

Public Service Electric and Gas Company filed on March 8, 1965 a request to withdraw petition for leave to intervene filed in this proceeding on January 22, 1965.

Due notice of the filing of the application to amend and opportunity for hearing thereon have been given by publication in the Federal Register on February 9, 1965 (30 F.R. 1827). No protest, other petition to intervene or notice of intervention has been filed in the proceeding concerning this amendment.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require that the Commission's order issued December 14, 1964, in Docket No. CP65–70 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued December 14, 1964 in Docket No. CP65–70 be and the same is hereby amended by authorizing Applicant to increase the annual contract volume of ACQ or off-peak gas allocated to Carolina to 4,000,000 Mcf to be effective only during the calendar years 1965 and 1966, in lieu of the 2,000,000 Mcf originally authorized in said order of December 14, 1964.

(B) In all other respects said order shall remain in full force and effect.

(C) The request of Public Service Electric and Gas Company filed March 8, 1965 to withdraw its petition for leave to intervene in Docket No. CP65–70 on March 1, 1965, be and the same is hereby granted.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

ALABAMA POWER COMPANY AND MOUNT VERNON MILLS, INC., PROJECT NO. 2408

ORDER ISSUING LICENSE (MAJOR)

(Issued April 5, 1965)*

On September 10, 1963, Alabama Power Company filed an application for license under Section 4(e) of the Federal Power Act (Act) for constructed Project No. 2408, known as the Thurlow Project, located on the Tallapoosa River in Tallapoosa and Elmore Counties, Alabama, in the vicinity of Tallassee and Carrville. On January 9, 1964, Mount Vernon Mills, Inc. of Baltimore, Maryland filed a joinder in the application filed by Alabama Power Company. We are hereinafter sometimes referring to these two companies as Joint Applicants.

According to the application for license, the original project, consisting of a wing dam across the western part of the river with power generating facilities, was constructed between 1843 and 1845. In 1897, the original dam was extended completely across the river and a new powerhouse was constructed on the east bank. On June 8, 1923, the Joint Applicants entered into an agreement whereby Alabama obtained the right to redevelop the site, and Alabama installed two additional generating units, of 3,000 kilovolt-amperes each, in stalls provided in the powerhouse. In 1928, Alabama raised the dam crest from elevation 258 to 284 feet and constructed a new powerhouse on the right bank containing three generating units. Alabama owns unit Nos. 1 and 2, and Mount Vernon owns Unit No. 3, although the latter is operated by Alabama.

The Thurlow Project is situated on the Tallapoosa River about 50 miles above its confluence with the Coosa River which joins with the Tallapoosa River to become the Alabama River. The United States has improved the Tallapoosa River for navigation from its mouth to a point 48 miles upstream therefrom.

---

*Order issued June 2, 1965, granting rehearing for further consideration [unreported].

The drainage area of the Tallapoosa River at Thurlow dam is about 3,300 square miles. The normal maximum water surface elevation of the Thurlow reservoir is 288.85, with a gross capacity of 18,400 acre-feet, of which 2,800 acre-feet are usable with a five-foot drawdown. The spillway capacity with the water surface at the top of the non-overflow sections is about 371,000 cfs, which is equivalent to the total peak output flow from Alabama's Martin project, about 10 miles upstream, plus the inflow from the intervening drainage area. The Thurlow project is a part of a more comprehensive plan which provides regulation for the flow of the Alabama River and hydroelectric power for the area by utilizing and coordinating stream flow and storage from two adjacent tributary watersheds. Available records show that the Thurlow project is capable of affecting the stage of the Tallapoosa River in the stretch improved for navigation and the stage of the Alabama River at the Montgomery gage situated 55 miles downstream from the project. No lands of the United States are affected by the project.

The Secretary of the Army and the Chief of Engineers have approved the plans of the project structures affecting navigation pursuant to Section 4(e) of the Act, and a condition was recommended for inclusion in any license for the project to insure that the project would not be operated in a manner that would nullify the provisions in the interest of navigation included as Article 8 in the license for Alabama's Martin Project No. 349 located upstream from the Thurlow project.

The Department of the Interior, in reporting on the application, stated that the project has no significant deleterious effects on fish and wildlife, and that the conditions usually included in a license for such a project in the interests of fish and wildlife and recreation will be adequate.

The Department of Health, Education, and Welfare has advised that the project has not created any problems affecting water supply, water pollution or vector control problems and none is expected to occur in the near future.

On May 11, 1964 Ben Walker, *et al.*, owners of lands along the Tallapoosa River which were flooded as a result of a storm on February 24, 1961, filed a petition to intervene in this proceeding. On June 5, 1964 Alabama Power Company moved to dismiss the petition to intervene on the grounds that Petitioners' interest related solely to pending civil damage proceedings relating to past operations of the Martin project and is not related to the application for license for the Thurlow project. While, for the reasons set forth herein, we do not concur in the specific relief requested by Petitioners, we think their petition does relate to matters affecting the present license proceeding in which they may have an interest. We shall therefore grant the petition to intervene.

The Petitioners alleged that the Joint Applicants by opening the gates at the Thurlow dam, could inundate their lands and that the Commission should insert in any license for the Thurlow project a requirement that the Joint Applicants maintain a cushion of reservoir capacity in the Thurlow reservoir during the rainy season between December 1 and April 1 of each year whereby exceptional and unusual floods could be absorbed within the reservoir capacities. Since Thurlow is a run of the river plant and enlargement of its storage capacity would be infeasible, the particular remedy suggested by these parties does not appear appropriate. However, we are inserting in the license a special article which will require Alabama Power to operate all of its Tallapoosa River projects, including the Martin reservoir which provides the primary storage on this stretch of the river in a manner which will tend to insure that stages no higher than natural peak stage can occur downstream from the Thurlow dam. Moreover, we are including a separate article directing Alabama Power Company to develop and implement a plan to provide adequate warning to downstream property owners whenever it appears that the discharge from the Martin storage project will be in excess of the hydraulic capacity of its power plant.

Pursuant to Section 4.41 of our Regulations under the Federal Power Act, the Applicant filed an Exhibit R setting out in detail the circumstances relating to recreational use in and around the project area. Applicant will be required to provide free access to project lands and waters by Article 18 of the license. Applicant's Exhibit R indicates, however, that the recreation potential of this run of the river project, like that of the Yates project immediately upstream therefrom, is not presently substantial and that the major recreational activities in the area are provided by the Licensee at its upstream Martin project where large storage facilities make boating and other recreational activities more feasible. Under these circumstances we have concluded that no additional recreational use facilities are required at the Thurlow project at the present time. Nevertheless we are providing by special Article 32 that the Licensee shall continue to cooperate with Federal, State, and local agencies in the development of facilities necessary for full recreational utilization by the public of project lands and waters and that it shall report the results of such cooperation and development to the Commission periodically at six-year intervals from the date of its license. Moreover, pursuant to the provisions of Article 17 of the license, the Commission is reserving the authority to require the Licensee to construct, maintain, and operate such additional recreational facilities as the Commission, after notice and opportunity for hearing, may determine are necessary and desirable and reasonably consistent with the primary purpose of the project.

Joint Applicants request a 50-year license, effective from the date of its issuance. In accordance with the criteria set forth in our April 25, 1962, Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of April 1, 1962, and a termination date of December 31, 1993.

The Commission finds:

(1) The project affects navigable waters of the United States.

(2) Joint Applicant Alabama is a corporation organized under the laws of the State of Alabama, and Joint Applicant Mount Vernon is a corporation organized under the laws of the State of Maryland and each has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the joint application has been given. Except for the aforementioned petition to intervene, no protests have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 77,300 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project for the costs of administration of Part I of the Act is reasonable.

(7) The exhibits designated and described in paragraph (B) below conform

to the Commission's rules and regulations and should be approved as part of this license.

The Commission orders:

(A) This license is hereby issued to Alabama Power Company and Mount Vernon Mills, Inc. (Joint Licensees) under Section 4(e) of the Federal Power Act (Act), for a period effective as of April 1, 1962, and terminating December 31, 1993, to the extent of the interest of each of the Joint Licensees in the ownership of the project facilities, for the continued operation and maintenance of constructed Thurlow Project No. 2408, located on the Tallapoosa River, and affecting navigable waters of the United States, subject to the terms and conditions of the Act which is hereby incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Thurlow Project No. 2408 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the Licensees or by the United States: such project area and project boundary being more specifically shown and described by the following exhibits which formed a part of the application for license.

Exhibit J: General Map (FPC No. 2408–1)

Exhibit K: Project Area Map (FPC No. 2408–2)

(ii) all project works consisting principally of: an open, fixed crest, concrete spillway with concrete non-overflow sections creating a reservoir at normal pool elevation of 288.85 feet with an area of 574 acres extending about three miles to the Yates Dam; the powerhouse containing two 25,000 kilowatt generators owned by Alabama Power Company and one 8,000 kilowatt generator owned by Mount Vernon Mills, Inc., step-up substation, 110 KV transmission line from Thurlow plant to the interconnected transmission system of Alabama Power Company; and appurtenant electrical and mechanical facilities; the location and character of the project works being more fully shown and described by the exhibits hereinbefore cited and other exhibits which are designated and described as follows:

Exhibit L	FPC No.	Showing
Sheet 1	2408–3	General layout of dam and powerhouse.
Sheet 1A	2408–11	Plan and sections of abutments.
Sheet 2	2408–4	Longitudinal section of powerhouse along centerline of units.
Sheet 3	2408–5	Plan of powerhouse showing equipment layout.
Sheet 4	2408–6	Sectional plan of powerhouse at elevation 226.
Sheet 5	2408–7	Transverse section powerhouse main unit.
Sheet 6	2408–8	Typical spillway section and crest detail.
Sheet 7	2408–9	Transverse section through mill unit.

Exhibit M, consisting of four typewritten pages entitled "General Description of Mechanical, Electrical and Transmission Equipment," filed in the Commission September 10, 1963.

(iii) all of the structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in L–3 (Revised August 1, 1964), entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States" (32 FPC 1114, which terms and conditions, designated as Articles 1 through 29, are attached hereto and made a part hereof except for Article 25 thereof; and subject to the following special conditions set forth herein as additional articles:

Article 30. Licensees shall not operate the Thurlow Project in such a manner which would nullify the provisions in the interest of navigation included in the license for Project No. 349, (Martin) of the Alabama Power Company, located upstream.

Article 31. The Licensees shall pay to the United States the following charge, effective as of April 1, 1962:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations in effect from time to time. The authorized installed capacity for such purpose is 77,300 horsepower.

Article 32. Licensees shall cooperate with Federal, State and local agencies in the development and maintenance of access areas and roads and such other facilities necessary for full recreational utilization by the public of project lands and waters, consistent with the terms of the license and the operation of the project. At the end of six (6) years from the date of issuance of this license and every sixth year thereafter, Licensees shall advise the Commission by letter of the results of cooperation with such agencies and of further recreation development at the project.

Article 33. Licensee, Alabama Power Company, shall operate its Tallapoosa River Projects Nos. 349, 2407 and 2408 in such manner that stages no higher than natural peak stage occur downstream from the Thurlow dam.

Article 34. Licensee, Alabama Power Company, shall implement a plan satisfactory to the Commission's Regional Engineer, which will provide public notice and warning to downstream property owners along the Tallapoosa River when discharge from Martin Project No. 349 is in excess of the hydraulic capacity of the Martin power plant.

Article 35. Licensee, Alabama Power Company, shall operate its Tallapoosa River Projects in the interests of flood control and coordinate such operation with the District Engineer, Corps of Engineers, as is consistent with the primary purpose of the reservoirs to provide for Licensee's power requirements.

(D) Petitioners Ben Walker, *et al.*, are hereby permitted to become interveners in this proceeding subject to the rules and regulations of the Commission: *Provided, however,* That participation by the Petitioners shall be limited to matters affecting asserted rights and interests specifically set forth in their petition for leave to intervene; and *Provided, further,* That the admission of the Petitioners shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders by the Commission in this proceeding.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgement of the acceptance of this license, it shall be signed for the licensees and returned to the Commission within 60 days from the date of issuance of this order.

Commissioner Ross *dissenting.*

Ross, *Commissioner; dissenting:*

On December 13, 1963 and on May 11, 1964 a group of persons, owning property adjacent to the Tallapoosa River, filed a Petition to Intervene in this matter and requested certain relief. The majority recognize that the interests alleged by these persons are substantial enough to warrant intervention since their interests are related to the operation of the present project as well as other projects licensed to Alabama Power Company.

It may be that modification of the operation of the flashboards and adequate warning would alleviate the intervenors' problems. Whatever corrective measures may be appropriate, if any, it is certain the intervenors and the applicant are now confronted with a settled position by the Commission. Despite the fact that the complaining parties have had a petition on file for nearly a year and a half, the intervenors are now for the first time being notified of their rights of intervention and will have to rely upon a petition for rehearing to present any other alternative measures for relief, an inadequate solution at best.

In my opinion, the matters raised in the petitions should have been fully explored with all interested parties prior to the grant of the requested license. The majority refuses to follow this course of action, and I therefore dissent.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CITIES SERVICE GAS COMPANY, DOCKET NO. G–2214

ORDER AMENDING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 5, 1965)

On February 16, 1965, Cities Service Gas Company (Cities) filed a request for further amendment to the certificate of public convenience and necessity issued in Docket No. G–2214 on September 25, 1953, 12 FPC 1257 as amended by orders issued on March 12, 1962, 27 FPC 497, and February 19, 1964, 31 FPC 433. Cities requests deletion of the authorization granted to it in the Commission's order issued February 19, 1964, to construct and operate replacement facilities in order to increase maximum annual deliveries to Farmers Chemical Company (Farmers) from 338,154 Mcf to 1,701,043, Mcf.

The original order of September 25, 1953, authorized Cities to construct and operate certain facilities in Cherokee County, Kansas, and in Jasper County, Missouri, in order to sell and deliver 182,077 Mcf of natural gas annually, on an interruptible basis, to Farmers (formerly Missouri Farmers' Association, Inc.) to be utilized by Farmers at its fertilizer plant near Empire City, Kansas. The order of March 12, 1962, authorized an increase in maximum annual deliveries to 338,154 Mcf.

The application for the order issued on February 19, 1964, resulted from plans by Farmers to increase the capacity of its fertilizer plant. The reason for the present request is that Farmers has now abandoned its plans to enlarge its plant, and greater quantities of natural gas will not be required.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order in Docket No. G–2214 issued September 25, 1953, as amended, be further amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order in Docket No. G–2214 issued September 25, 1953, as amended, be and the same is hereby further amended by deleting therefrom the authorization granted to Cities Service Gas Company by the Commission's order issued February 19, 1964, to construct and operate replacement facilities and to transport and deliver, on an interruptible basis, up to a maximum of 1,701,043 Mcf of natural gas annually to Farmers Chemical Company.

(B) In all other respects said order, as amended by the Commission's order issued on March 12, 1962, shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

EL PASO GAS SUPPLY COMPANY, DOCKET NO. CP60–101; EL PASO NATURAL GAS COMPANY, DOCKET NO. CP61–26

ORDER PERMITTING WITHDRAWAL OF APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 5, 1965)

On March 22, 1965, El Paso Gas Supply Company (Supply Company) and El Paso Natural Gas Company (El Paso) filed in Docket Nos. CP60–101 and CP61–26, respectively, notices pursuant to Section 1.11(d) of the Commission's Rules of Practice and Procedure withdrawing applications for certificates of public convenience and necessity filed in said dockets on May 13, 1960, and July 29, 1960, respectively. El Paso had requested authorization to construct and operate facilities for the purchase of natural gas from Houston Pipe Line Company (Houston) and Lo-Vaca Gathering Company (Lo-Vaca). Supply Company had requested authorization to transport this gas from the sellers to El Paso.

The contract between El Paso and Houston provided that the gas would be purchased by El Paso in Texas and would be consumed solely as fuel by El Paso and by Phillips Petroleum Company in Texas. In a petition filed in Docket No. CP61–177 for a declaratory order to remove uncertainty as to the jurisdictional character of Houston's sale, Houston stated that it could not make the gas available to El Paso if the gas was moved or sold in interstate commerce. In *Lo-Vaca Gathering Company, et al.*, Docket No. CI60–693, *et al.*, 26 FPC 606,[1] aff'd *sub nom. People of the State of California, et al.* v. *Lo-Vaca Gathering Company, et al.*, 379 U.S. 366 (1965), the Commission held that both sales would be jurisdictional.

In their notices withdrawing the applications Supply Company and El Paso state that the economic feasibility of the project of which the proposals in Docket Nos. CP60–101 and CP61–26 are parts is seriously impaired by loss of the gas which will not be made available to El Paso. Supply Company and El Paso also cite subsequent large discoveries of natural gas in the Delaware Basin which will make the project, as proposed, unnecessary. Accordingly, it would be appropriate to permit withdrawal of the applications.

The Commission finds:

Good and sufficient cause has been shown by El Paso and Supply Company to permit the withdrawal of the applications for certificates filed in Docket Nos. CP61–26 and CP60–101, respectively.

---

[1] Opinion No. 348.

The Commission orders:

El Paso Natural Gas Company, Applicant in Docket No. CP61–26, and El Paso Gas Supply Company, Applicant in Docket No. CP60–101, be and they are hereby permitted to withdraw the applications for certificates filed in said dockets.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP65–61

ORDER AMENDING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 5, 1965)

On February 18, 1965, El Paso Natural Gas Company (El Paso) filed a petition to amend the Commission's order in Docket No. CP65–61, issued pursuant to Section 7(c) of the Natural Gas Act on December 15, 1964, 32 FPC 1425, which order among other things, authorized El Paso to construct and operate a measuring and regulating station adjacent to its Northwest Division Eugene lateral in Lane County, Oregon, and to sell and deliver natural gas at the outlet thereof to Northwest Natural Gas Company (Northwest Natural) for resale to Coburg Veneer Company's plant near Coburg, Oregon. Northwest Natural was to construct and operate connecting facilities and provide El Paso with an access road to the meter station.

Northwest Natural has determined that it can install the measuring facilities at the terminus of its supply line, at its sole expense, more economically than it can provide access to the meter proposed by El Paso, and it has done so. Therefore, El Paso seeks to have the authorization for the measuring and regulating station described above deleted from the certificate of public convenience and necessity and in lieu thereof to obtain authorization to construct and operate a mainline tap at the delivery point to Northwest Natural.

Due notice of the filing of the petition was published in the Federal Register on March 11, 1965 (30 F.R. 3332). No protest, petition to intervene, or notice of intervention has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the certificate of public convenience and necessity issued in Docket No. CP65–61 on December 15, 1964, be amended as hereinafter ordered.

The Commission orders:

(A) The certificate of public convenience and necessity to El Paso Natural Gas Company in Docket No. CP65–61 on December 15, 1964, is hereby amended by deleting authorization for the construction and operation of the measuring and regulating station and authorizing, in lieu thereof, the construction and operation of a mainline tap as hereinbefore described and as more fully described in the petition to amend.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

GAS UTILITY DISTRICT NO. 2 OF POINTE COUPEE PARISH, LOUISIANA, DOCKET NO. CP65-107

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued April 5, 1965)

On October 23, 1964, Gas Utility District No. 2 of Pointe Coupee Parish, Louisiana (Applicant) filed in Docket No. CP65-107 an application, as supplemented on December 28, 1964, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Texas Eastern Transmission Corporation (Texas Eastern) to establish two separate physical connections of its natural gas transmission facilities with the facilities proposed to be constructed by Applicant, and to sell and deliver natural gas to Applicant for resale and distribution within the District and environs, all as more fully set forth in the application and supplement.

The total estimated volumes of natural gas required to meet Applicant's annual and peak day requirements for the initial three years of service are stated to be:

	1st year	2d year	3d year
Annual (Mcf)	80,122	86,719	93,154
Peak day (Mcf)	1,054	1,143	1,230

Applicant's total project cost, including transmission line and distribution system, is estimated to be $825,000, and will be financed with proceeds from the sale of revenue bonds.

On January 22, 1965, Texas Eastern filed an answer to the application and supplement filed by Applicant in this proceeding stating it would render the requested service on order of the Commission favorably determining the merits of the application.

Due notice of the filing of the subject application and opportunity for hearing thereon have been given by publication in the Federal Register on March 4, 1965 (30 F.R. 2829). No protest, petition to intervene or request for hearing has been filed in this proceeding.

The Commission finds:

(1) Texas Eastern Transmission Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 11, 1947 in Docket No. G-880 (6 FPC 171).

(2) Applicant, Gas Utility District No. 2 of Pointe Coupee Parish, Louisiana, a corporate subdivision of the State of Louisiana having its principal place of business in Pointe Coupee Parish, Louisiana, is legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Texas Eastern to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicant, and to sell and deliver to Applicant under a service agreement to be executed by Applicant

with Texas Eastern in accordance with the Commission's Regulations, up to 1,230 Mcf per day of natural gas for distribution and resale as hereinbefore described.

(4) The requirement that Texas Eastern serve Applicant, as hereinafter ordered, will not place an undue burden upon Texas Eastern, require Texas Eastern to enlarge its transportation facilities, or impair Texas Eastern's ability to render adequate service to its existing customers.

(5) Applicant should be prepared to receive natural gas from Texas Eastern for distribution in Gas Utility District No. 2 of Pointe Coupee Parish, Louisiana, within one year from the date of the issuance of this order.

The Commission orders:

(A) Texas Eastern Transmission Corporation be and is hereby directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant, as herein described, and to sell and deliver up to 1,230 Mcf of natural gas daily to Applicant under a service agreement to be executed by Applicant with Texas Eastern in accordance with the Commission's Regulations, for distribution and resale as hereinbefore described and as more fully described in the application in this proceeding. Such service shall be rendered pursuant to Texas Eastern's presently filed appropriate rate schedule.

(B) Texas Eastern shall report to the Commission in writing the date of commencement of service to Applicant within 10 days thereof.

(C) Applicant shall be prepared to receive service as directed herein within one year from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

KASKASKIA GAS COMPANY, DOCKET NO. CP65-176

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued April 5, 1965)

On December 15, 1965, Kaskaskia Gas Company (Applicant) filed in Docket No. CP65-176 an application as supplemented on February 5, 1965, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Mississippi River Transmission Corporation (Mississippi) to establish physical connection of its natural gas transmission facilities with the facilities proposed to be constructed by Applicant, and to sell and deliver natural gas to Applicant for resale and distribution in the community of Iuka, Illinois (Iuka), and environs, all as more fully set forth in the application and supplement thereto.

Applicant proposes (1) to construct a natural gas distribution system in Iuka and approximately 0.85 mile of 2-inch lateral transmission line, and (2) to receive deliveries of gas for Iuka at a point on Mississippi's main transmission line in Marion County, Illinois, approximately 0.85 mile due south of Iuka. The Illinois Commerce Commission, on January 20, 1965, issued an order authorizing Applicant to serve the Iuka area.

The total estimated volumes of natural gas necessary to meet Applicant's annual and peak day requirements for Iuka in the initial three-year period of proposed operations are stated to be:

	1st year	2d year	3d year
Annual (Mcf)	9,600	13,800	22,000
Peak day (Mcf)	106	155	250

The estimated cost of Applicant's proposed construction is $58,000, and will be financed by the issuance of common stock and by a loan from the First National Bank of Springfield, Illinois.

On January 21, 1965, Mississippi filed an answer to the application stating it does not object to the issuance of an order providing for the installation of facilities and for the sale of up to 250 Mcf of natural gas daily provided Applicant executes an appropriate service agreement for a volume of up to 250 Mcf per day for resale and distribution in Iuka, Illinois and environs.

Due notice of the filing of the subject application and opportunity for hearing thereon have been given by publication in the Federal Register on January 7, 1965 (30 F.R. 176). No protest, petition to intervene or request for hearing has been filed in this proceeding.

The Commission finds:

(1) Mississippi River Transmission Corporation, a Delaware corporation having its principal place of business in St. Louis, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 29, 1960, in Docket No. CP60–95 (24 FPC 1020).

(2) Applicant, Kaskaskia Gas Company, an Illinois corporation having its principal place of business in Salem, Illinois, is a corporation legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Mississippi to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicant, and to sell and deliver to Applicant under a service agreement to be executed by Applicant with Mississippi in accordance with the Commission's Regulations, up to 250 Mcf per day of natural gas for distribution and resale as hereinbefore described.

(4) The requirement that Mississippi serve Applicant, as hereinafter ordered, will not place an undue burden upon Mississippi, require Mississippi to enlarge its transportation facilities, or impair Mississippi's ability to render adequate service to its existing customers.

(5) Applicant should be prepared to receive natural gas from Mississippi for distribution in Iuka, Illinois, and environs within one year from the date of the issuance of this order.

The Commission orders:

(A) Mississippi River Transmission Corporation be and is hereby directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant, Kaskaskia Gas Company, as herein described, and to sell and deliver up to 250 Mcf of natural gas daily to Applicant under a service agreement to be executed by Applicant with Mississippi in accordance with the Commission's Regulations, for distribution and resale as hereinbefore described.

(B) Mississippi shall report to the Commission in writing the date of commencement of service to Applicant within 10 days thereof.

(C) Applicant shall be prepared to receive service as directed herein within one year from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

MIDWEST MISSOURI GAS COMPANY, DOCKET NO. CP65–179

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued April 5, 1965)

On December 18, 1964, Midwest Missouri Gas Company (Applicant) filed in Docket No. CP65–179 an application, as supplemented on March 9, 1965, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Mississippi River Transmission Corporation (Transmission) to make a physical connection of its transmission facilities with Applicant's proposed distribution facilities and to sell and deliver natural gas to Applicant for distribution and resale to residential and commercial customers located in the northeast section of Jefferson County, Missouri, all as more fully described in the application.

The estimated volumes of natural gas required to supply Applicant's annual and peak day requirements for the initial three years of proposed operations are stated to be:

	1st year	2d year	3d year
Annual (Mcf)	168, 400	208, 000	248, 100
Peak day (Mcf)	2, 056	2, 476	2, 897

This gas will be made available to Applicant through a corresponding reduction in the contract demand of Laclede Gas Company, (Laclede) under Laclede's contract with Transmission. (Laclede owns 60 percent of Applicant, and Missouri Natural Gas Company owns the remaining 40 percent.) It is stated that Applicant, Laclede and Transmission are all agreeable to the change and that the reduction will not diminish Laclede's ability to serve its market.

The total cost of construction of Applicants' distribution facilities is estimated to be $804,930, and the cost of metering and regulating facilities to be constructed by Transmission is estimated to be $16,500.

The Missouri Public Service Commission has authorized Applicant to serve the proposed area.

Laclede proposes to finance Applicant's construction with renewable short-term notes. The method of long-term financing will be determined later.

On December 30, 1964, Transmission filed its answer with the Commission and stated it has no objections to providing the requested service.

Due notice of the filing of the application and opportunity for hearing thereon was published in the Federal Register on January 8, 1965 (30 F.R. 241). No protest, petition to intervene or notice of intervention has been filed.

The Commission finds:

(1) Mississippi River Transmission Corporation, a Delaware corporation with its principal place of business in St. Louis County, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order accompanying Opinion No. 339 in Docket No. CP60–95, *et al.*, issued November 29, 1960 (24 FPC 1020).

(2) Applicant is a public utility company in the State of Missouri and is authorized to construct and operate the proposed facilities and to distribute and sell natural gas to inhabitants of the communities along its proposed pipeline system.

(3) It is necessary and desirable in the public interest that Transmission be directed to establish physical connection of its transportation facilities with the facilities proposed by Applicant and to sell and deliver to Applicant its daily and annual requirements of natural gas, as set forth in the application and as hereinafter ordered and conditioned.

(4) The requirement that Transmission serve the Applicant, as requested, will not place an undue burden upon it nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Mississippi River Transmission Corporation be and is hereby directed to establish physical connection of its natural gas transmission system with the facilities of the Applicant and to sell and deliver up to 2,897 Mcf of natural gas per day to Applicant, all as hereinbefore described and as more fully described in the application.

(B) Mississippi River Transmission Corporation shall execute and file with the Commission a new service agreement with Laclede Gas Company reflecting the reduction in contract demand, in accordance with the Commission's Regulations.

(C) Mississippi River Transmission Corporation shall execute and file with the Commission a service agreement with Applicant in accordance with the Commission's Regulations.

(D) Applicant shall be prepared to receive natural gas from Transmission within one year from the date of this order.

(E) Mississippi River Transmission Corporation shall notify the Commission of the commencement of service within 10 days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

INDEPENDENT PRODUCERS OF NATURAL GAS—ANTI-TRIGGERING CONDITIONS IN CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY, DOCKET NO. R-273

ORDER NO. 296

TENTH AMENDMENT TO STATEMENT OF GENERAL POLICY NO. 61-1

(Issued April 5, 1965)*

The Commission's Statement of General Policy No. 61-1 issued on September 28, 1960 (24 FPC 818, 18 CFR 2.56), specified acceptable price levels for initial service rates and proposed rate changes that would be accepted without suspension provided no protests or petitions to intervene were filed with respect thereto. The Commission noted in this Policy Statement that it was necessary to formulate a policy that was sufficiently broad to reach all its pricing areas in order to protect the consumer by "making the most effective use possible of the Commission's limited facilities in discharging the new and additional duties called for by the regulation of producers of natural gas". The Commission also recognized therein that it would be necessary to make changes to and to augment this Statement as demanded by time and circumstances.

The Commission's continuing experience with the effects of indefinite escalation clauses contained in some producer contracts for the sale of natural gas has made it manifest that in order for it to meet its statutory obligations to the consumer that it must implement its Policy Statement with respect to the operation and effect of such clauses.

---

*Published in the Federal Register on April 10, 1965 (30 F.R. 4670). Reconsideration denied June 2, 1965, 33 FPC 1190.

The Commission has in numerous recent certificate proceedings[1] relating to the initial sale of natural gas in interstate commerce utilized price-conditioning techniques in order to prevent the escalation of prices above existing triggering levels or to new price plateaus while the just and reasonable prices for such sales can be determined. The Commission indicated in these previous decisions that the price-conditioning techniques were adopted as a "* * * means of protecting the public interest by keeping gas at triggering prices from entering interstate commerce in the interim period until just and reasonable area rates are fixed".[2] It is clear that these objectives can be effectively frustrated if persons receiving permanent certificates to make sales of gas in noncontested proceedings could file increased rates at such triggering levels. Accordingly, we are amending the Statement of General Policy, as set out below, to outline the procedure we intend to follow henceforth to preclude any such result.

To accomplish our objective, we have set out in a new paragraph (d) of the Policy Statement triggering levels above which we propose, by condition in the permanent certificate granted in any noncontested proceeding to preclude any increased rate filing for a fixed period. As will be observed, the moratorium levels are fixed at two cents above the present initial price ceiling except in those areas in which we have already established triggering levels in litigated cases, in which case we have utilized the established level. This reflects a Commission study indicating that in the various areas which have not been the subject of Section 7 hearings any price more than two cents above the new gas ceiling is likely to result in triggering filings by other sellers in the area or to establish a new high price plateau. The moratorium period will extend to January 1, 1968, except for those areas in which earlier dates have already been established. Any applicant wishing to demonstrate that the price specified in the Policy Statement is not a triggering rate or otherwise wishing to contest the propriety of the condition will be permitted to do so, upon filing a timely request. In such situation, the application will be set for formal hearing and, if the producer wishes to commence operation pending such hearing, he must comply with the provisions of Section 157.28 of the Regulations under the Natural Gas Act governing temporary authorizations.

The Commission finds:

In view of the fact that this Statement of Policy does not prescribe any course of action on the part of any person but merely sets forth the Commission's contemplated course of action, notice under section 4(a) of the Administrative Procedure Act is not required and the Statement may be made effective upon issuance.

The Commission, acting pursuant to authority granted by the Natural Gas Act, as amended, particularly sections 4, 5, 7, and 16 thereof (52 Stat. 822, 823, 824, 830, 15 USC 717c, 717d, 717f, 717o), *orders:*

---

[1] *Placid Oil Co., et al.*, Opinion No. 398, 30 FPC 283, reversed *sub nom, Callery Properties, Inc.* v. *F.P.C.*, 335 F. 2d 1004 (CA5), certiorari granted March 8, 1965; *United Gas Pipe Line Co., et al.*, Opinion No. 399, 30 FPC 329; *Hassie Hunt Trust, Operator, et al.*, Docket No. G–19115, *et al.*, orders issued February 24, 1964, 31 FPC 447, April 17, 1964, 31 FPC 946, September 29, 1964, 32 FPC 874; *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, Opinion No. 436, 32 FPC 254. See Opinion No. 436–A, 32 FPC 952, at p. 956; *Sun Oil Co., et al.*, Docket No. G–8592, *et al.*, Opinion No. 445, 32 FPC 1183, at p. 1185; *Edwin L. Cox, et al.*, Opinion No. 446, 32 FPC 1301, at pp. 1307, 1308.

[2] *E.g., Hassie Hunt Trust, Operator, et al.*, Docket No. G–19115, *et al.*, order issued on April 17, 1964, 31 FPC 946.

(A) Effective upon the issuance of this order, § 2.56, Part 2, Statements of General Policy and Interpretations, Chapter I of Title 18 of the Code of Federal Regulations, is amended as follows:

(1) Add the following new paragraph (d):

"§ 2.56 Area price levels for natural gas sales by independent producers.

* * * * * * *

[Tenth Amendment]

(d) (1) All permanent certificates of public convenience and necessity granting applications filed after April 15, 1965, will contain a condition, substantially in the language set out in subparagraph (2) of this paragraph, precluding any filing of an increased rate at a price in excess of those designated in the attached table for the period prescribed therein, unless at the time of filing such certificate application, or within the time fixed in the notice of application for filing protests or petitions to intervene, the applicant indicates in writing that it is unwilling to accept such a condition in which event the application will be set for formal hearing to determine, *inter alia*, whether any grant of certificate shall be so conditioned.

(2) Standard anti-triggering condition:

'No increase in rate shall be filed prior to ____________________ at any price which would exceed the ceiling prescribed for the given area by paragraph (d) of the Commission's Statement of General Policy 61-1, as amended.' "

(2) Insert, to follow the existing table referred to in paragraph (c) of this section, the following:

[Table referred to in paragraph (d) of this section]

Levels and Duration of Anti-Triggering Condition for Various Pricing Areas

(At 14.65 psia unless noted)

Pricing area	Anti-triggering level	Effective duration of anti-triggering condition
Texas District No.:		
1	17.0	January 1, 1968
2	[4] 18.0	January 1, 1968 [4]
3	[4] 19.0	January 1, 1968 [4]
4	[4] 18.0	January 1, 1968 [4]
5	16.5	January 1, 1968
6	17.0	January 1, 1968
7-b	16.5	January 1, 1968
7-c	18.0	January 1, 1968
8	18.0	January 1, 1968
9	16.5	January 1, 1968
10	19.0	January 1, 1968
Louisiana (Southern):		
State	* [6] 23.55	July 1, 1967 [5]
Federal Domain	* [5] 23.55	July 1, 1967 [5]
(Northern)	* 20.75	January 1, 1968
Mississippi	* [6] 24.0	January 1, 1968 [6]
Oklahoma:		
Panhandle	19.0	July 1, 1967
Other	[7] 17.9	July 1, 1967 [7]
Carter Knox	18.8	July 1, 1967
Kansas	18.0	January 1, 1968
New Mexico:		
Permian Basin	18.0	January 1, 1968
San Juan Basin	* 15.0	January 1, 1968
Colorado	* 17.0	January 1, 1968
Wyoming	17.0	January 1, 1968
West Virginia	** 30.0	January 1, 1968

*At 15.025 psia

** At 15.325 psia

[4] Announced in 31 FPC 447.

[5] Announced in Opinion No. 436, 32 FPC 254.

[6] Announced in Opinion No. 445, 32 FPC 1183.

[7] Announced in Opinion No. 446, 32 FPC 1301.

[Secs. 4, 5, 7, 16, 52 Stat. 822, 823, 824, 830; 15 U.S.C. 717c, 717d, 717f, 717o.]

(B) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PACIFIC POWER & LIGHT COMPANY, DOCKET NO. E-7191

ORDER AUTHORIZING ACQUISITION AND DISPOSITION OF FACILITIES

(Issued April 5, 1965)

Pacific Power & Light Company (Pacific), filed an application with the Federal Power Commission on November 12, 1964, seeking an order pursuant to Section 203 of the Federal Power Act authorizing the exchange of certain electric facilities with the Consumers Power, Inc. (Consumers).

Pacific is a corporation organized under the laws of the State of Maine and doing business in the States of Oregon, Washington, Wyoming, California, Montana and Idaho with its principal business office at Portland, Oregon. It is engaged primarily in the business of generating, purchasing, transmitting, selling and distributing electric energy. It operates 12 physically separate electric systems which are interconnected through facilities of other electric utility systems.

Consumers was incorporated under the laws of the State of Oregon in 1939 as the Benton-Lincoln Electric Cooperative, Inc., and changed its name in 1955. It is an REA financed cooperative system engaged in transmitting and distributing electric energy in six counties in Oregon. It has no generating capacity and purchases electric energy to meet its requirements, mostly from Bonneville Power Administration.

The facilities to be acquired by Pacific from Consumers are located in the Willamette Valley area of Oregon and consist of 64 miles of distribution lines which serve 565 customers. The facilities include poles, conductors and all appurtenances used in rendering the service affected, together with all other property related thereto. The facilities to be acquired by Consumers from Pacific consist of 119 miles of distribution lines serving 954 customers.

According to the application, Pacific will pay a consideration of $178,700 for the properties to be acquired from Consumers which amount is $75,500 in excess of estimated depreciated original cost of $103,200 and an acquisition adjustment of $75,500 will be created on the books of Pacific. This adjustment will be eliminated by a debit to Account 435, Miscellaneous Debits to Surplus. For the properties to be transferred to Consumers, Pacific will receive a consideration of $352,000, which amount is $126,000 in excess of estimated depreciated original cost of $226,000, and, therefore, the sale will create a gain of $126,000 on Pacific's books. Pacific proposes to credit this gain to Account 434, Miscellaneous Credits to Surplus.

Applicant estimates that 89 of the 861 residential customers which will be transferred to Consumers will experience a small rate reduction amounting to about 37¢ per month. The remainder of the 861 customers will experience no change in rates. Applicant also estimates that 52 of the 507 residential customers which will be transferred from Consumers to Applicant will experience a small rate increase amounting to about 37¢ per month and that the remainder will experience no change in rates. Thirty-three customers served under a general rate schedule and one served under a government and municipal rate schedule will be transferred from Applicant to Consumers and 17 commercial customers served by Consumers will be transferred to Applicant. None of these customers will experience a change in rates.

Applicant states that the exchange of certain electrical distribution facilities in counties of the Willamette Valley will eliminate present unsatisfactory conditions of competition and duplication of systems with resultant benefits to the utilities and the consumers in less cost and better service. Greater efficiency and economy will result from more cohesive, integrated operating units and the prevention of unnecessary future duplication of extensions into common territory. Principal intangible benefits which will result from the transaction are the improvement of safety conditions for maintenance crews due to removal of cross-overs and lines in close proximity, and improvement of appearance of roads and streets by elimination of duplicate distribution facilities.

Direct monetary benefits from the transaction to the two systems involved will be small in relation to the size of the systems. Some savings will result immediately from the elimination of the operation and maintenance costs of some 50 miles of line which will be removed. In the future, orderly system development should prove more economical than the methods of the past in the Willamette Valley area.

Written notice of the application has been given to the Public Utility Commissioner of Oregon and to the Governor of that State. Notice has also been given by publication in the Federal Register on November 28, 1964 (29 F.R. 15932), stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest on or before December 16, 1964, with the Federal Power Commission, Washington, D.C. 20426. No protest or petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Pacific, a corporation is a public utility within the meaning of Section 203 of the Federal Power Act, subject to the jurisdiction of the Commission, as heretofore described in the Commission's order issued July 20, 1963, *Pacific Power & Light Company*, Docket No. E-7108 (30 FPC 409).

(2) By the proposed transaction, Pacific will acquire facilities from Consumers which have a value in excess of $50,000 and will merge or consolidate its facilities subject to the jurisdiction of the Commission with those of Consumers, another person, within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed acquisition, merger or consolidation of certain facilities by Pacific in exchange for certain facilities of Consumers, all as described above, upon the terms and conditions set forth in the application and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

The Commission orders:

(A) The proposed acquisition by Pacific of the aforementioned facilities, all as described above, is authorized and approved upon the terms and conditions and for the purposes set forth in the application subject to the provisions of this order.

(B) Pacific shall record the proposed transaction herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, evaluation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission or any other regulatory body, and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted by the Commission.

OPINION NO. 457

SOUTHERN CALIFORNIA EDISON COMPANY AND DESERT ELECTRIC COOPERATIVE, INC., DOCKET NO. E-7165

MEMORANDUM OPINION AND ORDER APPROVING ACQUISITION OF FACILITIES

(Issued April 5, 1965)*

Syllabus

1. In proceeding under Section 203 of the Federal Power Act Commission need not pass on authority of Cooperative to effect sale of local distribution facilities to Public Utility. P. 688.
2. Holding it has jurisdiction to question sale price in determining whether transaction is "consistent with the public interest" under Section 203, Commission *finds* purchase price for Cooperative's local distribution facilities is not unfair. P. 688.
3. Merger is consistent with public interest where it results in improved service at less cost. P. 689.
4. Sale of Cooperative's local distribution facilities approved where Cooperative sustained operating deficit for past five years and where rates to be applied will reduce costs to homeowners by 52 percent. PP. 689, 695.
5. Under Section 1.31(a) of the Rules, exceptions to presiding examiner's initial decision may be filed only by party to proceeding. P. 689.
6. Improperly filed "Exceptions" accepted as brief *amicus curiae* and considered on merits. P. 689.
7. Argument that decision should be deferred pending outcome of California suit relating to Cooperative's legal authority to dispose of its property rejected—Commission agrees it should now approve merger as in public interest. PP. 689, 696, 697.
8. Public Utility required to keep separate accounts for newly acquired property pending completion of State litigation. P. 689.
9. There was no need to make finding that Cooperative member was party in interest under Section 308(a) of the Act, since he was permitted to participate in hearing but never sought intervention. P. 689.
10. Commission *approves* acquisition of facilities under Section 203 of the Federal Power Act.

John R. Bury, *R. E. Woodbury*, and *Donald J. Carman* for Southern California Edison Company.

Glen E. Stephens, *Eugene A. Nazarek* and *Bert L. Lunceford* for Desert Electric Cooperative, Inc.

Lawrence A. Hutton for Forrest H. Riordan, Jr.

John S. Everett, Jr. for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

In his initial decision issued January 27, 1965, in the above entitled matter the presiding examiner approved the merger or consolidation of the facilities of Southern California Edison Company with the facilities of Desert Electric Cooperative, Inc. under Section 203 of the Federal Power Act. No exceptions have been filed by any party, but Forrest H. Riordan, a member of the Cooperative but not a party, filed a brief on exceptions and by letter of March 9, 1965, the Secretary accepted the brief conditionally for consideration by the Commission. On March 22, 1965, Edison and the Cooperative filed a joint brief opposing exceptions, and on March 26, 1965, Riordan filed a motion for leave to file a brief in reply to the brief opposing exceptions.

---

*Initial decision appears on p. 690.

As found by the examiner, Edison, a public utility under the Federal Power Act incorporated in California, operates in large areas in California and in Nevada. The Cooperative owns facilities for the local distribution of electricity in the vicinity of the community of Twenty-nine Palms in San Bernardino County, California, and is subject to the jurisdiction of the California Public Utilities Commission. It makes no sales for resale and purchases its entire requirements from Edison.

As of December 31, 1963, the original cost less depreciation of Cooperative's electric plant in service was $1,994,270.14. Its total assets, including debits, amounted to $2,354,993.78. In each of five years ending in 1963 it sustained increased operating losses, and by the end of that year it had an operating margins deficiency amounting to $185,710.47. Its indebtedness to the Rural Electrification Administration had increased to $2,448,275 by May 31, 1964.

Based on the receipt of consents from a majority of the members (71.7 percent as of the date of the hearing) an agreement of Purchase and Sale was executed on April 2, 1964. Under the agreement the price to be paid by Edison is the amount of the Cooperative's indebtedness to REA, the amount of membership fees collected, and all current liabilities. Had the sale been consummated as of May 31, 1964, the purchase price would have been approximately $2,520,000. Edison's lower rates would be put into effect and the Cooperative's personnel would be retained except for the manager who is over the retirement age. After hearing, the Public Utilities Commission of California authorized the merger in accordance with the agreement.

Because of protests from members of the Cooperative, a hearing was held in Twenty-nine Palms, California; notices of intervention were filed only by the California Commission and the People of the State of California. However, individual protestants, who were not parties, were permitted to cross-examine and offer statements and testimony. As recited by the examiner, Edison's evidence showed that the acquisition would result in major economies, rate reductions of over 50 percent, elimination of the indebtedness to REA, and likelihood of increased economic development of the area.

The protestants contended the proposed sale was not properly authorized by the Cooperative's membership, the price did not represent true value, and the line charges to new members exceeded those charged by the Cooperative. The examiner, in our opinion, properly did not pass upon the authority of the Cooperative to effect the sale, which is subject to a suit in the Courts of California, but confined his findings to the public interest under Section 203 of the Power Act.

We also agree with the examiner that the price is not unfair. It will be in excess of the book net assets and will result in an acquisition adjustment, which Edison proposes to write off to earned surplus. The amount of the acquisition adjustment cannot be precisely determined on the record but would be the excess of the purchase price over the Cooperative's net investment and other assets. As the examiner says, a higher price would be unfair to the stockholders of the purchasing company, who would be burdened by the acquisition adjustment. However, we believe contrary to the examiner, that we have jurisdiction to question the price in order to determine whether the transaction is "consistent with the public interest" under Section 203.

As for the line charges to new customers, the examiner finds that for a small amount of service the Cooperative's charges would be lower than Edison's, but with increased service Edison's charges would be more favorable than the Cooperative's. In any case, as the examiner notes, the evidence shows that the Cooperative's line extension charges were the major cause of its operating deficits.

As found by the examiner, we are of the opinion that the resulting rate decrease is very much in the public interest. Thus for 1963 the Cooperative's revenues from all classes of service was approximately $257,000; at Edison's rate the total would have been only $123,000 or 52 percent less.

The root of the dissensions among the members of the Cooperative is the change in the nature of the membership. In the early stages the original membership was composed largely of permanent residents located on large sites at considerable distances from the main line, who were interested in inexpensive line extensions. Now the substantial majority of the current membership consists of those who build small homes for use on week-ends and are more concerned with low operating rates. We must take cognizance of the fact that this change has occurred and is not likely to be reversed. Our determination must therefore be made on the basis of the overall interests of the current membership, which will gain from a change to the service provided by Edison.

In conclusion, we agree with the examiner that the result of the merger will be improved service at less cost. There is a positive advantage to the consuming public if the acquisition of Cooperative's facilities by Edison is approved, which satisfies us that the merger is consistent with the public interest.

Riordan's brief on exceptions is not properly filed as such because under Section 1.31(a) of our Rules, exceptions may be filed only by a party to the proceeding. However, we accept it as a brief *amicus curiae* and will consider it on its merits. We shall also accept Riordan's reply to Applicant's brief opposing exceptions as it is in the nature of an addendum to his brief on exceptions.

While Riordan argues that we should defer decision pending the outcome of the California suit relating to the Cooperative's legal authority to dispose of its property, we agree with the examiner that we should now approve the consummation of the merger as in the public interest. *California* v. *F.P.C. and El Paso Natural Gas Co.*, 369 U.S. 482, cited by Riordan is distinguishable because it concerns a suit on a matter related to the public interest—whether the merger violated the antitrust laws. Here the suit merely relates to corporate authority, a matter which we must necessarily leave to the California courts, but does not concern the basis of our decision. However, we shall provide that Edison shall keep separate accounts for its newly acquired property pending completion of the litigation. Riordan makes the further argument that the examiner should have found him a party in interest under Section 308(a) of the Act. There was no need to make such a finding because Riordan was permitted to participate in the hearing but never sought to intervene.

The Commission further finds:

(1) Southern California Edison Company, a California corporation, is a public utility within the meaning of Sections 201 and 203 of the Federal Power Act, subject to the jurisdiction of the Commission.

(2) By the proposed transaction, as described above, Southern California Edison Company will merge or consolidate its facilities subject to the jurisdiction of the Commission with those of Desert Electric Cooperative, Inc., another person, within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed acquisition and merger or consolidation of the facilities of Desert Electric Cooperative, Inc. by Southern California Edison Company, as recited above, upon the terms and conditions specified in the application and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act for the reasons set forth above.

The Commission orders:

(A) The proposed acquisition and merger or consolidation of the facilities of Desert Electric Cooperative, Inc. by Southern California Edison Company, all as described above, is hereby authorized and approved upon the terms and conditions as set forth in the application, subject to the provisions of this order.

(B) Southern California Edison Company shall record the transaction herein authorized and the facilities and properties described above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees, particularly the provisions of Account 102, Electric Plant Purchased or Sold, Account 114, Electric Plant Acquisition Adjustments, and appropriate Electric Plant Instructions, thereof.

(C) Any acquisition adjustment created by Southern California Edison Company's acquisition of Desert Electric Cooperative, Inc.'s facilities shall be eliminated by a charge to Account 216, Unappropriated Earned Surplus.

(D) Edison shall maintain in conformity with the Uniform System of Accounts, supplemental accounts in scope and form, satisfactory to the Commission designed to show separately electric plant, depreciation reserve, operating revenues, operating expenses, and depreciation applicable to the properties of the Cooperative until such time as Edison is relieved from this requirement by the Commission.

(E) This authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission or any other regulatory body, and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

(F) Riordan's brief filed March 2, 1965, is not accepted as a brief on exceptions but as a brief *amicus curiae.* Riordan's motion filed on March 26, 1965, to file a reply brief to Applicant's brief opposing exceptions is hereby granted, and the reply brief is accepted with the same status as the brief on exceptions.

(G) The decision of the presiding examiner, except as modified above, is hereby adopted as the decision of the Commission.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON AN APPLICATION UNDER SECTION 203 OF THE FEDERAL POWER ACT TO ACQUIRE ADDITIONAL FACILITIES

(Issued January 27, 1965)

RENDELMAN, *Presiding Examiner:* Southern California Edison Company (Edison) and Desert Electric Cooperative, Inc. (Cooperative) filed a joint application with the Federal Power Commission on May 25, 1964, for an order pursuant to Section 203 of the Federal Power Act which would authorize the acquisition by Edison, and the merger or consolidation with its own facilities, of all the electric facilities owned by Cooperative, in accordance with the terms and provisions of an Agreement of Purchase and Sale between the parties dated April 2,

1964. The application further seeks inclusion in the order of a declaration that the Federal Power Commission has no jurisdiction over the sale by Cooperative of the said facilities or alternatively, authorization of such sale by Cooperative pursuant to the terms of the aforementioned agreement. Commission jurisdiction over the acquisition by Edison is conceded.

Edison is a public utility incorporated under the laws of the State of California which generates, purchases, transmits, distributes and sells electric energy in portions of central and southern California and in the counties of Nye and Esmeralda in the State of Nevada.

Cooperative was incorporated in the State of California on February 27, 1950, and was granted a certificate of public convenience and necessity by the Public Utilities Commission of the State of California on January 31, 1956,[1] which permitted exercise of the franchise granted by San Bernardino County, dated June 8, 1953.[2] Cooperative owns facilities for the local distribution of electricity in the vicinity of the community of Twenty-Nine Palms in San Bernardino County, California, and is subject to the jurisdiction of the California Public Utilities Commission with respect to rates, service, security issues, etc. Its certificated service area includes approximately 226 miles east of, but not including, the community of Twenty-Nine Palms and approximately 252 square miles to the west thereof for a total of 478 square miles in what is known as the "high desert" area of southern California. A considerable portion of this area is undeveloped and electric service is generally concentrated in the developed areas totaling some 200 square miles. Practically all of Cooperative's service area is surrounded by the facilities and service territory of Edison, however, each company serves at retail only within its respective territory and does not compete with the other. Cooperative makes no sales for resale and purchases its entire energy requirements from Edison at the rate set forth in Edison's Rate Schedule FPC No. 18, taking delivery at a substation adjacent to Edison's high desert substation located about seven miles west of Twenty-Nine Palms.

As of December 31, 1963, the original cost of Cooperative's electric plant in service, less accrued depreciation, was $1,994,270.14. Cooperative's total assets, including debits, amount to $2,354,993.78. In each of the five years since 1958 Cooperative has sustained increased operating losses as follows:

1959	$1, 151
1960	25, 573
1961	36, 879
1962	44, 966
1963	50, 169

On December 31, 1963, Cooperative's operating margins deficiency, as shown on its books, amounted to $185,710.47. Cooperative's indebtedness to the Rural Electrification Administration (REA) has increased from approximately $1,500,000 in 1958 to $2,448,275 by May 31, 1964. Under the circumstances outlined in this proceeding, it is unnecessary to reach the question of this Commission's jurisdiction over Cooperative.

In July 1963 a petition signed by approximately 600 Cooperative members was presented to Cooperative's Board of Directors requesting that negotiations be initiated for sale of the Cooperative properties to an investor-owned utility company. A five-member sale committee was appointed by the Board which invited purchase offers from all of the major investor owned utilities in California. California Electric Power Company, the only utility which evinced any interest, entered into negotiations with the sale committee which resulted in submission of an offer on September 20, 1963. Because of a three-to-three split in the vote of Cooperative's Board of Directors, no further action was taken thereon. Thereafter, following the merger of California Electric into Edison, as authorized by order of the Commission issued October 1, 1963, a further, and ostensibly more favorable offer was tendered by Edison. At the annual meeting of Cooperative's membership on March 14, 1964, two additional directors favorable to the proposal were elected and the question of acceptance of Edison's offer was then submitted to the entire membership. Based on the receipt of consents from a majority of the members, an "Agreement of Purchase and Sale" was executed on April 2, 1964. As of the date of this hearing Cooperative had a total of 2,382 members of whom 1,709 or 71.7 percent voted in favor of acceptance.

---

[1] Decision No. 52526, 54 CPUC 639.

[2] Ordinance No. 713.

Under the terms of the agreement the price to be paid by Edison is the amount of Cooperative's indebtedness to REA, plus an amount equal to the unrefunded membership fees collected and held by Cooperative. In addition, Edison agrees to assume all Cooperative's current liabilities. Had the sale been consummated as of May 31, 1964, the purchase price would have been approximately $2,520,000. The rate to be placed into effect in Cooperative's service territory, allegedly lower than Cooperative's rate, is the rate presently applicable in Edison's rate zone 6.1, which includes the areas surrounding Barstow, Blythe, Palm Springs, Twenty-Nine Palms, and Victorville. Personnel presently employed by Cooperative is to be retained by Edison at the same salaries as heretofore with the exception of Cooperative's manager who is over Edison's mandatory retirement age. After hearing, the Public Utilities Commission of the State of California, by Opinion and Order dated August 25, 1964, authorized the merger in accordance with the Agreement of Purchase and Sale of April 2, 1964. A petition for rehearing was denied on November 10, 1964.

Following receipt of a large number of letters, mostly from members of Cooperative objecting to the proposed sale, the Commission, by order dated July 29, 1964, directed that a public hearing be held "respecting the matters involved in any issues presented in this proceeding." Pursuant to the further order of the Commission dated September 10, 1964, the hearing took place as scheduled in Twenty-Nine Palms, California on September 28 and 29, 1964, before a group of approximately 150 persons, consisting almost entirely of Cooperative members.

The applicants' witnesses testified generally that acquisition of Cooperative's facilities would be consistent with the public interest in that (1) major economies would result from the elimination of duplication in management, supervision, clerical and mechanical accounting functions; (2) substantial rate reductions in all classes of service would result under Edison's rate in that revenues from residential customers would be reduced by approximately 56 percent, and total revenues from all sources by approximately 52 percent; (3) consolidation of the two systems would eventually result in a reduction of unit cost; (4) Cooperative's indebtedness to REA and its steadily increasing operating deficit would be eliminated; and (5) the likelihood of increased economic development in the area because of the availability of an abundant supply of electric energy.

Notices of intervention were filed only by the Public Utilities Commission of California and the People of the State of California. Despite the failure to file petitions to intervene, as required by the Commission's order of July 29, 1964, individual protestants, who with one exception were unrepresented by counsel, were permitted to cross-examine the applicants' witnesses and to offer unsworn statements of position, or sworn oral testimony, in opposition to the proposed sale.

The principal contentions of those opposed to the sale are (a) the proposed sale was not authorized by the membership in accordance with Cooperative's articles of incorporation; (b) the price to be paid does not represent the true value of Cooperative's facilities; and (c) that the line charges to new members to be instituted by Edison exceed the line charges currently charged by Cooperative.

Prior to this hearing, but after execution of the Agreement of Purchase and Sale, an action described as a "Shareholders Derivative Suit" was commenced in the Superior Court of the State of California in and for the City of San Bernardino by an individual Cooperative member suing on his own behalf and on behalf of Cooperative and all its members. The action challenges the validity of the Agreement of Purchase and Sale and further, seeks to enjoin the sale of Cooperative's properties to Edison. The suit, briefly, alleges irregularities in the election of the presently constituted Board of Directors; invalid amendment of the articles of incorporation so as to provide for sale of Cooperative's facilities on approval by a majority vote of the members rather than by a two-thirds vote as heretofore required; and irregularities in the solicitation of consents to the proposed transaction.

During the course of this hearing the Presiding Examiner excluded testimony bearing on the issues in the state court action on the ground that those issues are appropriately and properly, and by choice of the protestants, before the state court for decision; nor are they material or relevant to a determination of the question concerned in this proceeding, namely, whether the proposed transfer of Cooperative's facilities to Edison is "consistent with the public interest," as required by Section 203 of the Federal Power Act.

Insofar as the monetary consideration to be paid is concerned, the protestants cite the fact that since there has been no independent appraisal of Cooperative's facilities, there can be no determination of the true value thereof. It is further alleged that the amount accepted by Cooperative's Board of Directors was the first and only offer made by Edison and not a sum arrived at as the result of arm's-length negotiation. Edison's witness, however, testified that the contract price represented substantially more than book value and that the continuing operating losses of Cooperative have resulted in a current net deficit in proprietary capital in the amount of approximately $185,000. This amount in excess of original cost less depreciation constitutes a "write off" which must be charged to surplus and borne by Edison's stockholders rather than the ratepayers. Edison therefore contends that in all fairness to its stockholders it should not pay more than the agreed price. This method of charging acquisition cost in excess of original cost, less depreciation, to earned surplus is in accord with Commission policy. *Southern California Edison Co.*, 28 FPC 787, 790; *Duke Power Co.*, 30 FPC 1004, 1006. In the light thereof it would be inconsistent for the Commission to require a public utility to pay a price higher than the orginal cost of an electric facility since, to the extent that the seller gains by receiving a price in excess of original cost, the buyer loses in the same amount, a result which would be completely unfair to the stockholders of the purchasing company and would tend to discourage electric utility industry expansion even though such a transaction would benefit the consumer.

In the case of *South Carolina Electric and Gas Company*, 7 FPC 606,[3] the Commission had before it the protest of a would-be purchaser against the sale of the stock of a public utility company to another utility company whose purchase offer was less than the amount of the protestant's offer. There the Commission, citing *Pacific Power & Light Co., et al.* v. *Federal Power Commission*, 111 F. 2d 1014 held:

---

[3] Affirmed, *South Carolina Public Service Authority* v. *F.P.C.*, 170 F. 2d 948 (CA4-1948), cert. denied, 336 U.S. 953.

> Granted such a proposal, or some other plan not presently before us, might be better in certain aspects, nevertheless that fact is insufficient to support a finding that the proposal formally before us is not consistent with the public interest. The contention that the pending application should be denied because of the refusal of Commonwealth & Southern to accept the offer of the Authority to pay more than the price agreed upon with the applicant, and the protest regarding the methods used by Commonwealth & Southern incident to the negotiations, are matters relating to the sale by Commonwealth & Southern of its holdings to the applicant, over which we have no jurisdiction.

In the instant case, there is no evidence that the price is unfair, or that the transaction is contrary to the public interest, and the Commission similarly would appear to lack jurisdiction to question the sale price.

Further objection to the proposed acquisition stems from the allegation that development of the area will be deterred because Edison's line charges to new customers will be higher than the line charges presently charged by Cooperative. Cooperative's existing line extension rule provides for 1,000 feet of free footage, plus 65 cents per foot thereafter. Edison's Rule No. 15, in effect in the surrounding area served by Edison, is "promotional" in nature. Basically, Edison provides 300 feet of free footage and charges $1.30 per foot for each foot in addition thereto. However, additional free footage is provided in direct proportion to the increase in load. Thus the greater the number of the appliances connected, the greater will be the length of footage provided without charge.

The following table demonstrates the comparative practical operation of both Edison's and Cooperative's line extension charges:

Facts	Desert electric rule	Edison rule
(1) Residential customer, one light bulb, single phase service.	1,000 ft. of free footage. 65¢ per foot for excess length.	300 ft. of free footage. $1.30 per foot for excess length.
(2) Customer with refrigerator and lighting, 2,000 ft. line extension.	$650 for line extension.	$2,000 for line extension.
(3) All-electric home, 2,000 ft. line extension.	$325 for line extension.	No charge for line extension
(4) Motors of 1 horsepower or more, three phase service.	Free footage is 100 ft. per hp. $1.00 per foot for excess length.	Free footage is 175 ft. per hp. of connected load. $1.30 per foot for excess length.

Cooperative's president, testifying in favor of the merger, stated that Cooperative's current line extension policy was the major cause of Cooperative's continually increasing operating deficit and that if the instant merger were not consummated, he would recommend application by Cooperative to the California Public Utilities Commission for a revision of the line extension policy so as to more nearly conform to the line extension policy maintained by Edison in the surrounding area.

Much of the internecine dissension in Cooperative results from the gradual change in the composition of the majority of its membership. Whereas in its early and formative stages the original membership was composed almost entirely of permanent residents, the substantial majority of the current membership consists of what has come to be known locally as "week-enders," or residents who have established smaller homes in the area, on minimum homesteaded sites (400 sq. ft.), which are used mainly on weekends for recreational purposes.

The original Cooperative members, with permanent residences on large sites at considerable distances from the mainline, were interested mainly in the construction of line extensions, and the transportation of electrical energy, from the main power line as inexpensively as possible. But the presently constituted majority membership, by reason of the large buildup of homes maintained for recreational purposes on considerably smaller plots of ground in proximity to the mainline, is more concerned with low operating rates than inexpensive line extension charges. While the Edison line extension policy could, in and of itself, prove more expensive to the individual whose home is not near, or adjacent to, the mainline, the fact is that the large majority of Cooperative's membership will derive greater benefit from the cheaper rates which will be instituted by Edison, than from the current line extension policy which the dissident minority seeks to perpetuate. Also of interest to the "week-enders" is the fact that Edison's minimum charge is $1.10 per month, whereas Cooperative's minimum charge is $6.00 per month.

A comparison of Cooperative's rates with the rates Edison would apply, as set forth in the California Public Utilities Opinion of August 25, 1964, demonstrates the following:

Rate Comparison—Residential and Commercial Service, Southern California Edison Co.—Desert Electric Cooperative, Inc., Typical Monthly Bills*

Residential service	Lighting, and small appliances 50 kwhr	Lighting, etc., and refrigeration 100 kwhr	Lighting, etc., refrigeration and cooking 250 kwhr	Lighting, etc., refrigeration, cooking, and water heating	
				500 kwhr	750 kwhr
Desert Electric schedule D	$6.00	$10.00	$14.00	$19.00	$24.00
Edison Co.:					
Present schedule	3.67	5.47	9.71	12.07	15.74
Proposed schedule	3.67	5.47	9.71	12.07	15.74
Commercial service	**3.0 kw 375 kwhr**	**6.0 kw 750 kwhr**	**12.0 kw 1500 kwhr**	**30.0 kw 6000 kwhr**	**40.0 kw 10,000 kwhr**
Desert Electric schedule No. A	$21.00	$36.00	$63.00	$201.00	$311.00
Edison Co.:					
Present schedule	18.98	34.73	59.57	185.71	262.61
Proposed schedule	18.98	34.73	59.57	185.71	258.61
Schedule P-1	13.63	24.50	45.80		
Schedule P-2				124.25	179.25

*Levels of usage are the standards used in the Federal Power Commission publication of Typical Electric Bills.

Street lighting service is provided for on Desert Electric Cooperative, Inc. Schedule No. LS-1 at $4.00 per lamp per month for all night service to utility-owned 175 watt incandescent lamps. Service on Southern California Edison Co. Schedule LS-1 is provided for at $3.00 per lamp per month.

The record also shows that Cooperative revenues from residential customers in 1963 amounted to approximately $228,000. Charges for the same usage at Edison's rate would have been approximately $99,000, a reduction of 56 percent. For the same period Cooperative revenues from all classes of customers was approximately $257,000. At Edison's rate the total would have been approximately $123,000, or 52 percent less. It thus appears that Cooperative's customers, in the aggregate, are presently paying approximately $10,000 more per month than they would be paying for the same amount of energy, under similar conditions of service, at Edison's applicable rate schedule.

Several protestants voiced the fear that if the merger were accomplished Edison would immediately take steps to institute a rate increase. No reason appears why it should be assumed that such an application to the California Public Utilities Commission, if made, would automatically be granted. As a matter of fact, Edison's representations to the Commission with respect to the savings which would result from the merger of California Electric Power Co. into the Edison system, and the following condition in the order approving such merger, practically assure a contrary result.[4]

> (C) Edison shall file, on or before May 1, 1965, cost and revenue data showing Company's costs of rendering service to each of its wholesale for resale customers the rates to which are subject to this Commission's jurisdiction, calculated in accordance with applicable Commission rulings and utilizing, among other things, as the test period the calendar year 1964 showing both historical revenues and *pro forma* adjustments thereto, a prudent net investment rate base and a fair rate of return thereon.

There are additional advantages to be gained from the acquisition of Cooperative's facilities by Edison. The economic future of Cooperative under existing conditions would not appear to be overly sanguine. There is nothing in the record to support a prognosis that Cooperative's economic deficit will diminish or that Cooperative could become self supporting in the reasonably foreseeable future. The result as presently indicated could only be an increased indebtedness to the REA.

The conclusion is inescapable that under Edison there will be improved electric service at less cost. Duplication of facilities and services will be eliminated and the quality of electric service will be improved because of the larger and more efficient organization which will be made available by Edison.

In *Pacific Power & Light Co.* v. *Federal Power Commission*, 111 F. 2d 1014, 1016, 1017 the court, in interpreting that part of Section 203 of the Federal Power Act which requires that the Commission find that acquisition by, or merger of one public utility with another, "will be consistent with the public interest" stated:

> The phrase "consistent with the public interest" does not connote a public benefit to be derived or suggest that idea of a promotion of the public interest * * *. It is enough if the applicants show that the proposed merger is compatible with the public interest * * *. We see no more in the prohibition [against consolidation of facilities without prior approval of Commission] than the purpose of insuring against public disadvantage through the requirement of a showing that mergers of this sort will not result in detriment to consumers or investors or to other legitimate national interest * * * the statute does not require a showing that positive benefit to the public will result * * *

In the instant case the applicants have gone further than merely "insuring against public disadvantage" and have adduced sufficient evidence to prove "that a positive benefit to the public will result * * *." On the record in this case it is therefore found that the public interest will best be served if the acquisition of Cooperative's facilities by Edison is approved.

Informal requests have been filed with the Commission on behalf of the protestants urging that the Commission suspend further action herein until such time as a final decision is reached in the state court action. Under the circumstances, however, the delay that would be occasioned thereby is not warranted. As hereinbefore pointed out, a determination of the issues before the state court is not requisite to resolution of the issues in this proceeding. It is thus possible to reach a conclusion with respect to the merits of the merger, insofar as the public interest is concerned, independent of any consideration of the validity of the contract by which the merger is to be effected. A state court judgment holding such contract invalid would therefore not render a Commission decision moot with respect to the issues considered therein. The request must therefore be denied.

---

[4] As of January 1, 1965, Edison instituted a rate reduction to retail customers in this area which would have the effect of further reducing the estimated revenue from Cooperative members by an additional $4,000 per year.

ADDITIONAL FINDINGS AND CONCLUSIONS

Upon consideration of the entire record herein, the evidence adduced, and the briefs filed, it is found and concluded, in addition to the findings and conclusions heretofore set out, that:

(1) Southern California Edison Company, a California corporation, is a public utility within the meaning of Sections 201 and 203 of the Federal Power Act, subject to the jurisdiction of the Commission.

(2) By the proposed transaction, as described above, Southern California Edison Company will merge or consolidate its facilities subject to the jurisdiction of the Commission with those of Desert Electric Cooperative, Inc., another person, within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed acquisition and merger or consolidation of the facilities of Desert Electric Cooperative, Inc. by Southern California Edison Company, as recited above, upon the terms and conditions specified in the application and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act for the reasons set forth above.

ORDER

WHEREFORE, *It is ordered*, subject to review by the Commission on appeal, or upon its own motion, as provided by the Commission's Rules of Practice and Procedure, that:

(A) The proposed acquisition and merger or consolidation of the facilities of Desert Electric Cooperative, Inc. by Southern California Edison Company, all as described above, is hereby authorized and approved upon the terms and conditions as set forth in the application, subject to the provisions of this order.

(B) Southern California Edison Company shall record the transaction herein authorized and the facilities and properties described above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees, particularly the provisions of Account 102, Electric Plant Purchased or Sold, Account 114, Electric Plant Acquisition Adjustments, and appropriate Electric Plant Instructions, thereof.

(C) Any acquisition adjustment created by Southern California Edison Company's acquisition of Desert Electric Cooperative, Inc.'s facilities shall be eliminated by a charge to Account 216, Unappropriated Earned Surplus.

(D) This authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission or any other regulatory body, and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

MARTIN E. RENDELMAN,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP63-26

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 5, 1965)

On February 18, 1965, Southern Natural Gas Company (Applicant) filed in Docket No. CP63-26 a petition to amend an order of the Commission issued in said docket April 6, 1964, 31 FPC 789, and amended June 4, 1964, 31 FPC 1387, which order and amendment authorized Applicant among other things, to construct and operate a pipeline extending approximately 175 miles from the vicinity of Macon, Georgia, and to make certain sales from said line to Atlanta Gas Light Company (Atlanta) for resale and distribution in certain southeast Georgia communities and to the City of Vidalia, Georgia (Vidalia) for resale and distribution therein.

Applicant seeks amendment of the aforementioned orders so as to authorize Applicant to sell and deliver to Atlanta rather than Vidalia natural gas for distribution in Vidalia. In addition Applicant requests deletion from the aforementioned orders the authorization to construct and operate a separate delivery point for service to Vidalia at Alamo, Georgia.

The Applicant states that on September 24, 1964, Vidalia granted a franchise to Atlanta to distribute gas in Vidalia. Consequently, sale and delivery of gas by Applicant for resale and distribution in Vidalia are proposed to be made to Atlanta rather than to Vidalia. The application further states that Atlanta proposes to serve Vidalia through its Alamo, Georgia, delivery point from Applicant, and that for this reason the separate delivery point to Vidalia at Alamo, Georgia, will not be required.

Due notice of the subject application to amend has been given by publication in the Federal Register on March 11, 1965 (30 F.R. 3334). No protest, petition to intervene, or notice of intervention has been filed herein.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued April 6, 1964, and amended June 4, 1964, be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued April 6, 1964, and amended June 4, 1964, be and the same is hereby amended by (1) authorizing Applicant to substitute Atlanta Gas Light Company (Atlanta) in lieu of the City of Vidalia, Georgia, as the resale customer and distributor of natural gas in the City of Vidalia, Georgia, and (2) deleting authorization for the construction and operation of a separate delivery point for the City of Vidalia, Georgia.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. CP64-5

ORDER FURTHER AMENDING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 5, 1965)

On December 14, 1964, Texas Eastern Transmission Corporation (Applicant) filed in Docket No. CP64-5 an application to further amend the certificate of public convenience and necessity issued by the Commission in said docket on December 19, 1963, 30 FPC 1959, as amended on October 28, 1964, 32 FPC 1229. The certificate, as amended, authorized among other things the construction and operation of approximately 638 miles of 30-inch pipeline loops to be installed at various locations and in varying lengths along Applicant's pipeline system between Opelousas, Louisiana, and Lambertville, New Jersey. Applicant now requests authorization to construct and operate approximately 337 miles of 36-inch pipeline loops in lieu of 421 miles of the presently remaining 502 miles of 30-inch loops which have not yet been installed, as more fully described in the application.

The facilities authorized by the Commission in the aforesaid orders included approximately 177 miles of 36-inch lateral pipeline extending to the vicinity of Venice, Plaquemines Parish, Louisiana, from a point on Applicant's 30-inch south Louisiana pipeline system near New Roads, Pointe Coupee Parish, Louisiana, and a total of approximately 638 miles of 30-inch pipeline loops to be installed at various locations and in varying lengths along Applicant's pipeline system between Opelousas, Louisiana, and Lambertville, New Jersey over a 4 year period. Pursuant to such authorizations, the 1964 pipeline facilities consisting of approximately 136 miles of 30-inch pipeline loops and the 36-inch Venice lateral pipeline have been installed, leaving approximately 502 miles of 30-inch pipeline loops to be installed under such authorizations during the 1965, 1966 and 1967 construction programs. Approximately 81 miles of the 30-inch pipeline loops will be installed as heretofore authorized. The present application contemplates that the remaining 421 miles of 30-inch looped lines previously authorized will not be constructed, but, in lieu thereof, 337 miles of 36-inch looped lines will be installed.

The proposed change in construction, as set forth above, will not further increase the peak day capacity of the system beyond the 408,010 Mcf per day increase contemplated by the certificate of December 19, 1963, as amended.

The proposed facilities will result in an increase in estimated construction costs for the next three years of $4,978,000. The estimated operation and maintenance costs are estimated to be decreased by $3,000 per year as a result of the change.

Due notice of the filing of the application to amend was published in the Federal Register on December 29, 1964 (29 F.R. 18529). No protest, petition to intervene, notice of intervention, or request for hearing has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the certificate of public convenience and necessity issued on December 19, 1963, as amended on October 28, 1964, be further amended as herein ordered.

The Commission orders:

(A) The certificate of public convenience and necessity issued to Texas Eastern Transmission Corporation in the Commission order of December 19, 1963, as amended October 28, 1964, in Docket No. CP64-5 be and the same is hereby amended by deleting therefrom the authorization for the construction and operation of approximately 421 miles of the 30-inch pipeline loops and substituting therefor 337 miles of 36-inch pipeline loops as described above and as more fully described in the application which is on file with the Commission.

(B) In all other respects the orders in Docket No. CP64-5 shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TRANSWESTERN PIPELINE COMPANY, DOCKET NO. CP63-143

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 5, 1965)

On August 7, 1964, Transwestern Pipeline Company (Applicant) filed in Docket No. CP63-143 an application to amend the order of the Commission issued April 3, 1963 in said docket, 29 FPC 702, which order authorized the construction and operation of a tap valve on Applicant's line in Curry County, New Mexico, and the transportation and sale, through September 30, 1964, of surplus volumes of natural gas on an interruptible basis to Southern Union Gas Company (Southern) for resale through Southern's distribution facilities in Portales, New Mexico, all as more fully set forth in the application.

The original purpose of the service being rendered by Applicant was to supplement Southern's gas supply to avoid curtailments of institutional and industrial customers. Applicant has executed a service agreement with Southern to supply Southern a maximum peak day delivery of 5,000 Mcf, and continue the service now being rendered under Applicant's Rate Schedule E-1, under the same terms and conditions, except the date of termination thereof. The gas will be sold to Southern's customers for use in industrial plants and for industrial purposes. Applicant requests an extension of the prior authorization for a period of two years, ending September 30, 1966, pursuant to an agreement between Applicant and Southern dated July 27, 1964.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on December 29, 1964 (29 F.R. 18532). No petition to intervene, notice of intervention, or protest to the granting of the application has been filed.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued April 3, 1963, in Docket No. CP63-143, be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued April 3, 1963, in Docket No. CP63-143, be and the same is hereby amended so as to extend the time period during which Applicant is authorized to make short-term, interruptible sales to Southern Union Gas Company to end September 30, 1966, in lieu of September 30, 1964, in accordance with the agreement between Applicant and Southern Union Gas Company, dated July 27, 1964.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PUBLIC UTILITIES AND LICENSEES—TRANSMISSION LINE STATISTICS IN ANNUAL REPORT FPC FORM NO. 1, DOCKET NO. R-270

ORDER NO. 294-A

AMENDING ORDER NO. 294 TO EXTEND ITS PROVISIONS TO NONJURISDICTIONAL ENTITIES

(Issued April 6, 1965)*

The Commission, on March 16, 1965, issued Order No. 294, 33 FPC 569 (30 F.R. 3707), intending thereby to relieve partially all persons who are required to file the annual report, F.P.C. Form No. 1, from furnishing detailed information with respect to each transmission line they operate. Since, however, certain language in the order erroneously restricted the relief to jurisdictional respondents, we are here making the necessary corrections to carry out our original intention. Accordingly—

The Commission, acting pursuant to the authority set forth in Order No. 294, *orders*:

(A) The opening paragraph of Order No. 294 is amended to read as follows:

> "The schedule 'Transmission Line Statistics' on page 442 of the annual report F.P.C. Form No. 1, provides for the furnishing of information with respect to each transmission line operated by the public utility, licensee, or other person required to make the report by paragraphs (b) and (c) of § 141.1 of the Regulations Under the Federal Power Act."

(B) The first paragraph of ordering clause (A) of Order No. 294 is amended to read as follows:

> "Effective for the reporting year 1964 only, Annual Report F.P.C. Form No. 1, required by paragraph (b) and (c) of § 141.1, Subchapter D, Chapter I of Title 18, Code of Federal Regulations, to be filed by public utilities, licensees, and others, is amended by amending instruction paragraphs 1. and 3. to the schedule 'Transmission Line Statistics', on page 442 of the said Form No. 1 to read as follows:"

(C) These amendments shall be effective as of March 16, 1965, the date of issuance of Order No. 294.

(D) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

---

*Published in the Federal Register on April 22, 1965 (30 F.R. 5703).

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NOS. CP65-157 AND G-1922

ORDER AUTHORIZING EXPORTATION OF NATURAL GAS AND MODIFYING PERMIT

(Issued April 6, 1965)

On December 1, 1964, Tennessee Gas Transmission Company (Applicant) filed in Docket No. CP65-157 an application pursuant to Section 3 of the Natural Gas Act for authorization to export natural gas from the United States to the Dominion of Canada (Canada), all as more fully set forth in the application in this proceeding.

Applicant proposes to export natural gas for sale to Trans-Canada Pipe Lines Limited (Trans-Canada) at an existing delivery point at the international boundary near Niagara Falls, New York. Applicant and Trans-Canada have entered into a precedent agreement, dated November 2, 1964, whereby the latter agrees to purchase the following annual volumes of natural gas (14.73 psia) during a five year period ending November 1, 1970:

	MMcf
Until November 1, 1966	25,500
November 1, 1966 to November 1, 1967	20,400
November 1, 1967 to November 1, 1968	15,300
November 1, 1968 to November 1, 1969	10,200
November 1, 1969 to November 1, 1970	5,100

The application indicates that the gas will be sold at a rate of 43.43 cents per Mcf at 15.025 psia.

The facilities at the existing delivery point near Niagara Falls, New York, were authorized by the Commission's opinion and order, issued September 1, 1953, in Docket No. G-1969 (12 FPC 311); in Docket No. G-1921 said opinion and order also authorized Applicant to export natural gas to Canada. On September 11, 1953, in Docket No. G-1922, Applicant was issued a Presidential Permit authorizing the facilities for the exportation of natural gas contemplated in Docket Nos. G-1921 and G-1969. By subsequent Commission orders, issued July 25, 1960, 24 FPC 71, in Docket No. G-1921 and December 14, 1961, in Docket No. G-20389, 26 FPC 860, as amended, Applicant was authorized to import or export natural gas in the event of an emergency on the system of either Trans-Canada or Applicant and to import natural gas to be purchased from Trans-Canada by Applicant on an interruptible basis, all by means of the existing facilities at the international boundary near Niagara Falls. The same orders amended the Presidential Permit issued in Docket No. G-1922 to reflect the use of the existing facilities for the additional purposes.

On December 1, 1964, Applicant filed in Docket No. G-1922 an application to amend further its Presidential Permit in order to operate and maintain its existing facilities at the international boundary near Niagara Falls to export natural gas to Canada for sale to Trans-Canada as proposed in the application in Docket No. CP65-157.

Concurrently with the filing of the instant applications, Applicant filed in Docket No. CP65-158 a related application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of natural gas facilities in order to export natural gas as proposed in the instant applications.

Notice of the filing of the instant applications was issued on December 18, 1964. This notice fixed January 14, 1965, as the last day for filing protests or petitions to intervene. Several petitions to intervene were filed herein. None of said petitioners requests a hearing in these proceedings or opposes the granting of the requested authorizations. On January 14, 1965, Panhandle Eastern Pipe Line Company filed a petition to intervene herein; however, on January 19, 1965, said petition was withdrawn. Opportunity for hearing has been given by the issuance of said notice and the publication thereof in the Federal Register on December 29, 1964 (29 F.R. 18528).

The Commission finds:

(1) The exportation of natural gas by Applicant, Tennessee Gas Transmission Company, from the United States to Canada, as hereinabove described and as set forth in the application in Docket No. CP65–157, will not be inconsistent with the public interest within the meaning of Section 3 of the Natural Gas Act provided that said exportation be on the terms and conditions hereinafter set forth:

(a) Applicant shall file statements or reports with the Commission from time to time under oath and in such details as the Commission may require with respect to the whole or any part of the instant export operation.

(b) The authorization granted herein is not transferable or assignable and shall remain in full force and effect only so long as Applicant continues the acts or operations herein authorized in accordance with the terms and conditions herein set forth.

(c) The authorization granted herein shall automatically terminate on November 1, 1970.

(d) Applicant shall not, during the term of the authorization granted by this order, materially change or alter its export operations without first obtaining the permission and approval of the Commission.

(e) In the event that Applicant should abandon or permanently cease for any reason whatsoever all or any part of the instant export operation prior to the termination date described in (c) hereof, Applicant shall forthwith notify the Commission of said fact and the reason therefor.

(f) The maximum annual volumes to be exported for sale to Trans-Canada by Applicant should not exceed the following:

Contract period:	*Annual volume MMcf at 14.73 psia*
Until November 1, 1966	25,500
November 1, 1966 to November 1, 1967	20,400
November 1, 1967 to November 1, 1968	15,300
November 1, 1968 to November 1, 1969	10,200
November 1, 1969 to November 1, 1970	5,100

(g) Applicant should comply with requirements of Section 153.8 of the Commission's Regulations under the Natural Gas Act before initiating the proposed exports to Canada.

(2) The Presidential Permit issued to Applicant in Docket No. G-1922 should be modified to authorize Applicant to maintain and operate the facilities for the purposes hereinafter authorized.

The Commission orders:

(A) Authorization be and the same is hereby granted to Applicant to export natural gas from the United States to Canada, as hereinabove described and as set forth in the application in Docket No. CP65-157, upon the conditions herein set forth and subject to the provisions of the Natural Gas Act and the Commission's Regulations issued thereunder.

(B) The maximum annual volumes to be exported for sale to Trans-Canada by Applicant shall not exceed the following:

Contract period:	*Annual volume MMcf at 14.73 psia*
Until November 1, 1966	25,500
November 1, 1966 to November 1, 1967	20,400
November 1, 1967 to November 1, 1968	15,300
November 1, 1968 to November 1, 1969	10,200
November 1, 1969 to November 1, 1970	5,100

(C) Applicant shall comply with requirements of Section 153.8 of the Commission's Regulations under the Natural Gas Act before initiating the proposed exports to Canada.

(D) The Presidential Permit issued to Applicant in Docket No. G-1922 is hereby modified to authorize Applicant to maintain and operate the facilities for the purposes authorized in Paragraph (A) above.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP65-158

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 6, 1965)

On December 1, 1964, Tennessee Gas Transmission Company (Applicant) filed in Docket No. CP65-158 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of natural gas facilities in order to export natural gas to Trans-Canada Pipe Line Limited (Trans-Canada) at the international boundary near Niagara Falls, New York, all as more fully set forth in the application in this proceeding.

Applicant proposed to construct and operate approximately 94.28 miles of 36-inch pipeline loop in Mississippi, Alabama, Tennessee, Kentucky and Ohio; 7.97 miles of 30-inch pipeline loop in Pennsylvania, and a combined total of 12,300 additional horsepower at its Compressor Stations Nos. 860, 87 and 219 located in Centerville, Tennessee; Portland, Tennessee; and Mercer, Pennsylvania, respectively.

The above described facilities will increase Applicant's system annual average day delivery capacity by 56,000 Mcf, from 2,971,000 Mcf to 3,027,000 Mcf.

Applicant proposes to export and sell the following annual volumes (14.73 psia) to Trans-Canada on a firm basis, during a five year period ending November 1, 1970:

	MMcf
Until November 1, 1966	25,500
November 1, 1966 to November 1, 1967	20,400
November 1, 1967 to November 1, 1968	15,300
November 1, 1968 to November 1, 1969	10,200
November 1, 1969 to November 1, 1970	5,100

The total estimated cost of the proposed facilities is $23,537,000, which cost will be financed through the sale of preferred stock, debentures and first mortgage pipeline bonds.

The deliveries of natural gas will be made to Trans-Canada at an existing interconnection at the international boundary near Niagara Falls, New York. The facilities at this delivery point were authorized by the Commission's opinion and order, issued September 1, 1953, in Docket No. G–1969 (12 FPC 311); in Docket No. G–1921 said opinion and order also authorized Applicant to export natural gas to Canada. On September 11, 1953, in Docket No. G–1922 Applicant was issued a Presidential Permit authorizing the interconnection for the exportation of natural gas contemplated in Docket Nos. G–1921 and G–1969. By subsequent Commission orders, issued July 25, 1960, in Docket No. G–1921, 24 FPC 71, and December 14, 1961, in Docket No. G–20389, 26 FPC 860, as amended, Applicant was authorized to import or export natural gas in the event of an emergency on the system of either Trans-Canada or Applicant and to import natural gas to be purchased from Trans-Canada by Applicant on an interruptible basis, all by means of the existing facilities at the international boundary near Niagara Falls. The same orders amended the Presidential Permit issued in Docket No. G–1922 to reflect the use of the existing facilities for the additional purposes.

Concurrently with the filing of the subject application, Applicant filed related applications in Docket Nos. CP65–157 and G–1922 for authorization to export natural gas and to amend further its Presidential Permit, respectively.

Several petitions to intervene and a notice of intervention by the Pennsylvania Public Utility Commission were filed herein. None of said petitions or the Pennsylvania Commission request formal hearing in this proceeding or object to the hearing and disposition of the subject application under the shortened procedure provided for by the Commission's Rules. Inasmuch as the shortened procedure is being used herein, no further action on said petitions or notice appears necessary. On January 14, 1965, Panhandle Eastern Pipe Line Company filed a petition to intervene herein; however, on January 19, 1965, said petition was withdrawn.

After due notice, no other petition to intervene, other notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 1, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of July 12, 1947, in Docket No. G–910 (6 FPC 777).

(2) The facilities hereinbefore described as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) Before beginning construction of the facilities hereinafter authorized applicant should submit proof to the Commission of Trans-Canada's authorization from the National Energy Board of Canada to import gas.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Tennessee Gas Transmission Company, to construct and operate the proposed facilities and to transport natural gas in order to export natural gas for sale to Trans-Canada as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

(D) Before beginning construction of the facilities hereinabove authorized applicant shall submit proof to the Commission of Trans-Canada's authorization from the National Energy Board of Canada to import gas.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NORTHERN STATES POWER COMPANY, PROJECT NO. 2440

ORDER ISSUING LICENSE (MAJOR)

(Issued April 7, 1965)

Application was filed on January 6, 1964 by Northern States Power Company (Applicant) of Eau Claire, Wisconsin, for a major license under Section 4(e) of the Federal Power Act (Act) for constructed Project No. 2440, known as the Chippewa Falls Hydro Plant, located on the Chippewa River, at Chippewa Falls, in Chippewa County, Wisconsin.

The project was constructed during 1927–28 and no substantial alterations to the project have been made thereafter.

Applicant requests a license for a period of 50 years effective from the date of its issuance. In a proceeding on an application for license filed by Dairyland Power Cooperative for Project No. 1960, the Commission on November 17, 1949, found in its Findings and Order issuing a license for Project No. 1960 on the Flambeau River, among other things, that the Flambeau and Chippewa Rivers, together with the Mississippi River were used for a number of years as a highway for the floating and rafting of quantities of logs and lumber in interstate commerce, and that the Flambeau River, at least from a point above Project No. 1960, and the Chippewa River, at least from its confluence with the Flambeau River constitutes navigable waters of the United States (8 FPC 1276, 1278).

Project No. 1960 is located at river mile 25.5 on the Flambeau. Project No. 2440 is located at river mile 78 on the Chippewa which is downstream from the mouth of the Flambeau. In its aforementioned Findings and Order, the Commission stated that logs floated down the Flambeau joined logs being floated down the Chippewa River where, at Eau Claire, they were sorted and coupled into fourteen-crib rafts which were floated down the Chippewa to Read's landing on the Minnesota bank at the confluence of the Chippewa and Mississippi Rivers.

The Secretary of the Army and the Chief of Engineers have reported that the plans of the project structures affecting navigation are satisfactory insofar as the interests of navigation are concerned.

The Department of the Interior, in reporting on the application, recommended, for inclusion in any license for the project, a special condition in the interests of fish and wildlife and recreation.

The Department of Health, Education, and Welfare has advised that there is no apparent pollution problem above or below the project dam, and it is not expected that the licensing of the project will adversely affect water supply, pollution or vector control.

The Public Service Commission of Wisconsin informed us that it had authorized the project dam by a permit it had granted in 1928.

On January 6, 1964, Applicant filed as part of its application an Exhibit R, a proposed plan for full public utilization of the project for recreational purposes, as required by Section 4.41 of the Commission's Regulations under the Federal Power Act (18 CFR 4.41). We expanded that section of our Regulations on January 8, 1965 to require that Exhibit R should include: (1) a map of the project area; (2) a statement of the extent of consultation and cooperation with appropriate Federal, State, and local recreation authorities; (3) notations on the map of the location and nature of the present and planned facilities and which of these are to be supplied by the licensee; and (4) estimates of public recreational utilization of the project. Consequently we are not approving the Exhibit R as filed with the application for license but we are requiring by Article 31 herein that the Applicant file within one year from the date of this license a revised Exhibit R conforming to the Commission's Regulations, and by Article 32 herein we are requiring Applicant to cooperate with the City of Chippewa Falls in the interests of recreation in connection with the use of project lands and waters by the public and to keep us advised at stated intervals with respect to the results.

In accordance with the criteria set forth in our April 25, 1962 Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of November 1, 1949 and a termination date of December 31, 1993.

The Commission finds:

(1) The project affects navigable waters of the United States.

(2) Applicant is a corporation organized under the laws of the State of Wisconsin and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a water-

way or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 28,800 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable.

(7) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

(A) This license is hereby issued to Northern States Power Company (Licensee) of Eau Claire, Wisconsin, under Section 4(e) of the Federal Power Act (Act), for a period effective as of November 1, 1949 and terminating December 31, 1993 for the continued operation and maintenance of Chippewa Falls Hydro Plant Project No. 2440, located on the Chippewa River at Chippewa Falls, in Chippewa County, Wisconsin, and affecting navigable waters of the United States, subject to the terms and conditions of the Act which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2440 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interests in such lands necessary or appropriate for the purpose of the project, whether such lands or interests therein are owned or held by the applicant or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit J: (FPC No. 2440-1) General Map of System (FPC No. 2440-2) General Map of System

Exhibit K: (FPC No. 2440-3) Detail Plan

(ii) project works consisting of: a 29-foot high dam 1267 feet long composed of a 270-foot concrete powerhouse section, a 64-foot sluice gate section, a 69-foot retaining section, a 572-foot concrete spillway section equipped with thirteen 40 x 13-foot tainter gates, and two rip rapped earth embankments of 177 and 175 feet in length, respectively; a powerhouse containing six adjustable-blade propeller-type turbine (5000 hp each) connected to six 3600 kw generating units connected to a 34,000 kva substation; and other appurtenances; the location, nature and character of which are more specifically shown and described by the exhibits which also formed part of the application for license and which are designated and described as follows:

Exhibit L No.	FPC No.	Showing
1	2440-4	General plan of development.
2	2440-5	Plan and elevation of dam.
3	2440-6	Longitudinal section of power house on centerline of units.
4	2440-7	Plan of generator room and forebay.
5	2440-8	Cross section of power house.
6	2440-9	Plan view and cross section of sluice and retaining section of dam.
7	2440-10	Cross section and details of spillway dam.
8	2440-11	Elevation and details of sluice and retaining sections of dam.
9	2440-12	Retaining wall and embankment at south end of spillway.
10	2440-13	Retaining wall and embankment at north end of power house.

Exhibit M: Consisting of one typewritten page and a circuit diagram filed January 6, 1964.

(iii) all other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-3 (Revised August 1, 1964) entitled, "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States" (32 FPC 1114), which terms and conditions, designated as Article 1 through 29, are attached hereto and made a part hereof, except for Article 25; and subject to the following special conditions set forth herein as additional articles:

Article 30. The Licensee shall within two years from the date of issuance of license provide such modifications in the project operation as may be agreed to by the Licensee, the Wisconsin Conservation Department, and the Bureau of Sport Fisheries and Wildlife to assure adequate flows for the downstream fisheries and recreation. In the event that the Licensee and the agencies named herein fail to reach an agreement on the issues involved, the Commission reserves the right to determine the amount of flow to be released after notice and opportunity for hearing.

Article 31. The Licensee shall within one year from the date of issuance of license submit for Commission approval a revised Exhibit R, conforming to regulations contained in 18 CFR 4.41 as clarified by Order No. 292 issued January 8, 1965, 33 FPC 32.

Article 32. Licensee shall cooperate with the City of Chippewa Falls in improving the existing boat launching ramp and with State and local agencies and individuals in the development and maintenance of access areas and roads and such other facilities necessary for full recreational utilization by the public of project lands and waters, consistent with the terms of the license and the operation of the project. At the end of six (6) years from the date of issuance of this license and every sixth year thereafter, Licensee shall advise the Commission of the results of cooperation with State and local agencies and of further recreation developments at the project.

Article 33. The Licensee shall pay to the United States the following annual charge effective November 1, 1949:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission, in accordance with its regulations, in effect from time to time. The authorized installed capacity for such purposes is 28,800 horsepower.

Article 34. The Commission reserves the right to determine at a later date what transmission facilities, if any, shall be included in this license as part of the project works.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PUBLIC UTILITY DISTRICT NO. 2 OF GRANT COUNTY, WASHINGTON, PROJECT NO. 2114

ORDER APPROVING EXHIBIT L DRAWINGS SHOWING FISH FACILITIES

(Issued April 7, 1965)

On March 29, 1957, Public Utility District No. 2 of Grant County, Washington, filed for Commission approval Exhibit L drawings of the general plans of the fish passage facilities at the Priest Rapids development of Project No. 2114, located on the Columbia River, Washington. The drawings, which were filed pursuant to Article 39 of the license, show the functional plans for fish passage facilities constructed at the Priest Rapids development.

By letters dated April 29, 1957 and May 15, 1957, respectively, the State of Washington, Department of Game, and the Department of the Interior, have advised of their approval in general of the fish passage facilities.

The Commission finds:

It is consistent with the public interest that the general plans for fish passage facilities, as shown on Exhibit L (FPC Nos. 2115-47 through -51) be approved.

The Commission orders:

The Exhibit L drawings for fish passage facilities at the Priest Rapids development of Project No. 2114, as described in the above finding, are hereby approved.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SOCONY MOBIL OIL COMPANY, INC., DOCKET NOS. RI64-1 AND RI64-642

ORDER TERMINATING PROCEEDINGS

(Issued April 7, 1965)

On February 18, 1965, Socony Mobil Oil Company, Inc. (Socony) filed a motion to terminate the above-docketed proceedings which concern a sale of natural gas made to El Paso Natural Gas Company (El Paso) in the Gallegos Canyon Field, San Juan County, New Mexico. Socony states that its predecessor in interest in these properties had filed successive proposed increased rates of 13.0495¢ and 14.05775¢ per Mcf with the Commission, reflecting a tax reimbursement increase and a periodic increase coupled with a proportional tax increase, respectively. Each of the proposed increased rates were suspended by order of the Commission, and were made effective, subject to refund, as of July 9, 1963, in Docket No. RI64-1 and May 18, 1964, in Docket No. RI64-642. However, El Paso did not pay the rate increase involved in Docket No. RI64-1, and paid only that increment of the proposed increased rate attributable to the periodic increase in Docket No. RI64-642.

On January 15, 1965, Socony made appropriate filings to waive the minimum guarantee for liquids provisions of the contract, and to withdraw that portion of the increased rate attributable to the increased tax reimbursement. The reduced rate of 13.0¢ per Mcf at 15.025 psia, which is at the area ceiling as set by the Statement of General Policy No. 61-1, was accepted for filing, and made effective as of January 1, 1965.

Socony states that the total amount of monies collected subject to refund, either by its predecessor, whose obligation it assumed, or itself, is $199.47. Under the circumstances, we view Socony's action here of filing a decrease in rate to the applicable area ceiling, and waiving the minimum guarantee for liquids provision in its contract, as being in the nature of an offer of settlement. No answer or protest to Socony's motion has been filed.

In view of the *de minimis* sum of monies involved, and our prior acceptance of Socony's proposed reduced rate, we shall relieve Socony of all refund obligation in these proceedings and shall terminate the same.

The Commission finds:

The motion to terminate filed by Socony on February 18, 1965, and to be relieved of refund obligation in these proceedings, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be granted as hereinafter ordered.

The Commission orders:

(A) The motion to terminate and to be relieved of refund obligation filed by Socony on February 18, 1965, in Docket Nos. RI64-1, and RI64-642, be and the same is hereby granted.

(B) The proceedings in Docket Nos. RI64-1 and RI64-642, be and the same are hereby terminated, and Socony is hereby relieved of any refund obligation imposed therein.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

JOINT USE OF WATER POWER PROJECT WORKS OR PARTS THEREOF FOR CERTAIN WATER SUPPLY PURPOSES, DOCKET NO. R-249

ORDER TERMINATING PROCEEDING

(Issued April 7, 1965)*

This proceeding involves a proposed amendment of the Regulations under the Federal Power Act to provide for the joint use of project works for certain water supply purposes. As set out in the notice of proposed rulemaking, issued November 6, 1963, the proposed amendment was intended to facilitate multiple uses of licensed project works, primarily reservoirs, in the interest of comprehensive development of a waterway or waterways and the conservation and utilization of water resources of a region, without imposing the cost of such uses on the power consumers.

General notice of the proposed rulemaking was given in the Federal Register on November 15, 1963 (28 F.R. 12176). On December 9, 1963, an extension of time to submit data, views and comments was granted. Many licensees and other interested parties commented. These comments have been carefully considered.

In view of the comments received, and after additional opportunity to consider the problems, we conclude that issuance of the proposed rule would be unnecessary and procedurally inappropriate. Insofar as existing licenses are concerned the proposed rule could have no application except to the extent that provision for the particular use was already incorporated into the license as a result of an express provision of the Act or a special or general article of the license. Since such authority will vary from license to license, it appears desirable to handle joint use problems relating to existing licenses on an *ad hoc* basis as they may arise. Insofar as new licenses are concerned, we believe that the matter can better be handled by special conditions in the license itself.

---

*Published in the Federal Register on April 14, 1965 (30 F.R. 4769).

We are, therefore, incorporating the substance of the proposed rule into a specific license condition which, in the absence of a showing of special circumstances, will be inserted in licenses issued in the future. The form of this proposed article is set out as Appendix A hereto. As will be noted, several modifications have been made in the Article as compared to the proposed rule. The first of these would eliminate reference to "pumped storage hydroelectric" facilities. As we made clear in Opinion No. 443 (Susquehanna Power Company and Philadelphia Electric Company, Project Nos. 405 and 2355, 32 FPC 826); any such project would require a license from the Commission and the Commission's comprehensive licensing authority is not restricted by any rights of existing licensees to be free of joint use of the water resources by a new project when the Commission finds that the resulting totality of river development, giving full consideration to any negative effects of such joint use, is most conducive to comprehensive development. We shall accordingly process such applications in accordance with our normal licensing procedures and the principles outlined in that Opinion.

The second modification was suggested by the Secretary of the Interior in his comments. This change would add "Federal agency" to those who could petition to use the project works for water supply purposes.

Finally, several of the comments expressed apprehension concerning interference with State water rights law or State or local plans for multiple use of project waters. As previously provided in the proposed rule, the Article provides that necessary water rights for such non-project purposes must be acquired pursuant to applicable State law, and we will also provide that parties seeking to invoke the Article submit a statement as to the relationship of the proposed use to any State or municipal plans which may have been adopted with respect to the use of such waters.

Upon consideration of the entire record in this proceeding—

The Commission finds:

The rule proposed herein is not necessary or appropriate in carrying out the provisions of the Federal Power Act and the proceeding should be terminated.

The Commission orders:

The above-captioned rulemaking proceeding is hereby terminated.

APPENDIX A

SPECIFIC LICENSE CONDITION PROVIDING FOR JOINT USE

On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall, after notice and opportunity for hearing, permit such reasonable use of its reservoirs or other project works or parts thereof as may be ordered by the Commission in the interest of comprehensive development of the waterway or waterways involved and the conservation and utilization of water resources of the region for water supply for steam-electric, irrigation, industrial, municipal or similar purposes, consistent with the primary objective of the project. The Licensee shall receive such reasonable compensation as may be appropriate for use of its reservoirs or other project works or parts thereof for such purposes, any such compensation to be fixed either by Commission approval of an agreement between the Licensee and the party or parties benefiting or by the Commission in the event the parties are unable to agree. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the application possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNITED FUEL GAS COMPANY, DOCKET NO. RP65-39; ATLANTIC SEABOARD CORPORATION, DOCKET NO. RP65-40

ORDER DENYING RECONSIDERATION

(Issued April 8, 1965)

On March 11, 1965, Washington Gas Light Company (Washington) filed an "Application for Reconsideration" of the Commission's orders, issued in the above proceedings on February 23, 1965, 33 FPC 306, 312. Those orders accepted revised tariff sheets reflecting rate reductions in the commodity components of the companies' rates effective January 1, 1965, and approved proposed refunds on a similar basis for the period from March 1, 1964 to December 31, 1964. The rate changes were submitted in accordance with a letter to the Commission filed on February 24, 1964, by The Columbia Gas System, which advised the Commission that after determination had been made in their rate design proceedings, United and Seaboard would consider the effect of the reduction in Federal income tax rates on their costs of service, and if warranted, would *voluntarily* file reduced rates to reflect the reduction in the Federal income tax rate for corporations from 52 percent to 50 percent. The rate design determinations were made in Opinion Nos. 430 and 430-A issued June 2, and October 14, 1964, 31 FPC 1342, and 32 FPC 1106. United and Seaboard filed their proposed reductions in rates on January 22, 1965 and served copies of those filings upon their jurisdictional customers.

On February 12, 1965, Washington submitted its comments on the proposals in which it observed that the proposed rate reductions were being reflected entirely in the commodity component of the demand-commodity rates without Respondents' having provided explanation or justification therefor. Washington concluded its letter with a statement to the effect that since more than 50 percent of the tax cost has been included in demand, "logical consistency" requires that the reduction in taxes be reflected in the demand component of the rate.

Our orders issued February 23, did not make specific mention of Washington's comment. However, due consideration was given whether the benefits of the proposed voluntary rate reductions and refunds should be delayed pending discussions on whether such reduction should be reflected in both the demand and commodity components of the companies' two-part rates. That manner of reflecting the reductions proposed in these proceedings would have only minor effect on the rates and refunds of any customer. On balance, we were of the view that it would not be in the public interest to delay our action on the proposal as submitted. Moreover, we do not agree with Washington's contention that "logical consistency" requires that these reductions be reflected entirely in the demand components of the rates. The minor changes in the commodity rates resulting from these reductions are not inconsistent with the rate design objectives of Opinion Nos. 430 and 430-A.

Accordingly, we find that Washington's application for reconsideration should be denied.

The Commission orders:

The application for reconsideration filed by Washington Gas Light Company on March 11, 1965, hereby is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., PROJECT NO. 2338

ORDER DISMISSING APPLICATION FOR REHEARING AND VACATING ORDER PERMITTING INTERVENTION

(Issued April 9, 1965)

On February 3, 1965, the Incorporated Village of Freeport, New York (Freeport) tendered for filing a petition requesting that this proceeding be reopened to consider further evidence as to the effect of the project on fish resources of the Hudson River. A petition to intervene was also filed. Both petitions were denied as untimely on February 5, 1965.

On March 10, 1965, Freeport tendered an application for rehearing. The day before, on March 9, we issued our Opinion No. 452, 33 FPC 428, which contained our order issuing a license to Consolidated Edison. In the opinion and order, we found it in the public interest to invoke our continuing authority under the license to require the Applicant to take all necessary measures for the protection of fish. We therefore provided an opportunity for interested persons to submit additional evidence concerning the design of the fish protection facilities. Accordingly, a public hearing, including this issue, was calendared for May 4, 1965, and intervention by new parties was permitted until April 16, 1965. By notice issued March 26, 1965, the time to file petitions to intervene was extended to May 3, 1965.

In view of the foregoing, by letter-order of March 19, 1965, we accepted Freeport's application for rehearing as a petition to intervene in the proceeding set for hearing on May 4, 1965, and, by our order of March 30, 1965, we permitted intervention. Freeport, by letter received April 8, 1965, states that although it intends to file a formal petition to intervene in the proceeding calendared for May 4, 1965, our order of March 30, 1965 granting intervention should be vacated. Freeport's reason is that it wishes to preserve its claimed right to court review under Section 313 of the Federal Power Act (16 USC 825(1)) of the denial of its petitions to intervene and to reopen the original proceeding.

Considered as an application for rehearing of our letter-order of February 5, 1965, denying the petition to intervene and the petition to reopen the original proceeding, Freeport's application, filed March 10, 1965, was beyond the thirty-day limit prescribed by Section 313(a) of the Federal Power Act for the filing of applications for rehearing.

It is further apparent that, with reference to the original hearings, Freeport's petition to intervene, filed shortly before the issuance of the license order, was untimely under our rules. In our letter-order of February 5, 1965, rejecting the petition, we detailed the lengthy chronology of the proceeding, showing that before this matter was submitted for decision, there had been ample opportunity to file petitions to intervene. See Section 1.8(d) of the Commission's Rules of Practice and Procedure. We also denied the request to reopen on the ground that such a request may be granted only to a party to the proceeding. The application for rehearing asserts no basis for deviating from our previous determination.

The Commission finds:

(1) Freeport's application for rehearing does not present any new ground which would cause us to modify our letter-order of February 5, 1965 rejecting Freeport's untimely petition to intervene and its request to reopen the original proceedings.

(2) Freeport's application, filed after expiration of the thirty-day limit on applications for rehearing prescribed by the Federal Power Act, should be dismissed.

(3) The order of March 30, 1965, granting Freeport intervention in the hearing calendared for May 4, 1965, should be vacated.

The Commission orders:

(A) Freeport's application for rehearing is hereby dismissed.

(B) The order of March 30, 1965, granting Freeport intervention in the hearing calendared for May 4, 1965, is hereby vacated.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SOHIO PETROLEUM COMPANY, DOCKET NO. G-17376

ORDER REJECTING OFFER OF SETTLEMENT, AND DENYING MOTION TO TERMINATE PROCEEDINGS

(Issued April 9, 1965)

On September 28, 1964, Sohio Petroleum Company (Sohio) submitted an offer of settlement, pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure, involving a sale of natural gas to Tennessee Gas Transmission Company (TGT) under Sohio's FPC Gas Rate Schedule No. 90 in the Deckers Prairie Field, Harris County, Texas (Texas Railroad Commission District No. 3). Under the terms of the offer, Sohio proposes to eliminate the favored-nation and price redetermination clauses from its contract, to amend the periodic escalation provisions thereof, and to establish a 14.6¢ per Mcf rate for the subject sale. Additionally, Sohio proposes to refund the difference between 16.16947¢ per Mcf, the amount which has been charged and collected subject to refund, and the settlement rate from and after September 1, 1961, which is the refund date fixed in Sohio's company wide settlement, *Sohio Petroleum Company*, Docket No. G-8488, *et al.*, 30 FPC 1623. However, the proposed increased rate involved herein was made effective, subject to refund, after the statutory suspension period, by motion filed on June 1, 1959, and has been charged and collected since that date. Although the sale made under Sohio's Rate Schedule No. 90 is the same as the sale made under its Rate Schedule No. 1, which was included in its company-wide settlement, the interest covered by Rate Schedule No. 90 was not acquired until after Sohio had filed its company-wide settlement proposal.

Therefore, Sohio's proposal to make refunds only from September 1, 1961, is not consistent with our policy of requiring full refunds of the difference in amounts collected subject to refund and the settlement rate when offers of settlements as to particular sales are proposed under the provisions of the Second Amendment to the Commission's Statement of General Policy No. 61-1, issued December 20, 1960, 24 FPC 1107, as amended by Order No. 264 issued March 27, 1963, 29 FPC 589. Sohio has not shown good cause for an exception to that requirement. Consequently, we shall reject the offer of settlement and motion to terminate.

The Commission finds:

It is necessary and proper in carrying out the provisions of the Natural Gas Act and the Regulations thereunder to reject the offer of settlement and to deny the motion to terminate filed by Sohio with the Commission on September 28, 1964.

The Commission orders:

The offer of settlement filed by Sohio in this proceeding on September 28, 1964, is hereby rejected, and the motion to terminate filed therewith is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CENTRAL ILLINOIS ELECTRIC AND GAS CO., DOCKET NO. CP65-257

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued April 12, 1965)

On February 26, 1965, Central Illinois Electric and Gas Co. (Applicant) filed in Docket No. CP65-257 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Panhandle Eastern Pipe Line Company (Panhandle) to make physical connection of its transmission facilities with Applicant's proposed distribution facilities and to sell and deliver natural gas to Applicant for distribution and resale to residential and commercial customers located in the Villages of Camargo and Garrett, Illinois, and their environs, all as more fully described in the application.

Applicant seeks two separate physical connections of its proposed lateral transmission lines with Panhandle's main transmission line at points in Douglas County, Illinois, and the sale and delivery of natural gas to Applicant for resale to Camargo and Garrett at those connections. Applicant will construct a regulator and odorizer station at the points of connection with Panhandle's line and construct 2-inch intermediate pressure lateral mains from the regulator stations to the south village limits of Camargo and Garrett. The distribution systems are also to be constructed by Applicant.

The total third year cost of the proposed facilities to be constructed by Applicant is estimated to be $109,660. No enlargement of Panhandle's transmission facilities is required.

The estimated gas requirements of Applicant are as follows:

	1st year	2d year	3d year
Annual (Mcf)	15,086	26,530	31,157
Peak day (Mcf)	253	296	340

Applicant is regulated by the Illinois Commerce Commission which has granted it certificates of public convenience and necessity to serve the communities of Camargo and Garrett and environs. Applicant has also obtained 50-year franchises from each village.

Panhandle has not filed an answer to the application. Due notice of the filing of the application and opportunity for hearing thereon was published in the Federal Register on March 13, 1965 (30 F. R. 3402). No protest, petition to intervene or notice of intervention has been filed.

The Commission finds:

(1) Panhandle Eastern Pipe Line Company, a Delaware corporation with its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of September 23, 1942, in Docket Nos. G-200 and G-207 (3 FPC 273).

(2) Applicant is a public utility company organized and existing under the laws of the State of Illinois and is authorized to construct and operate the proposed facilities and to distribute and sell natural gas to inhabitants of the communities along its proposed pipeline system.

(3) It is necessary and desirable in the public interest that Panhandle be directed to establish physical connection of its transportation facilities with the facilities proposed by Applicant and to sell and deliver up to 340 Mcf of natural gas per day to Applicant, as set forth in the application and as hereinafter ordered and conditioned.

(4) This order shall be conditioned upon Applicant's being prepared to receive gas from Panhandle, as proposed, within one year from the date on which this order issues and upon the execution of a service agreement between applicant and Panhandle in accordance with the Commission's Regulations under the Natural Gas Act.

(5) The requirement that Panhandle serve the Applicant, as requested, will not place an undue burden upon its nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Panhandle Eastern Pipe Line Company be and is hereby directed to establish physical connection of its natural gas transmission system with the facilities of the Applicant and to sell and deliver up to 340 Mcf of natural gas per day to Applicant, all as hereinbefore described and as more fully described in the application.

(B) Panhandle Eastern Pipe Line Company shall execute and file with the Commission a service agreement with Applicant in accordance with the Commission's Regulations under the Natural Gas Act.

(C) Applicant shall be prepared to receive natural gas from Panhandle within one year from the date of this order.

(D) Panhandle shall notify the Commission of the commencement of service within 10 days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

COMMUNITY PUBLIC SERVICE COMPANY, DOCKET NO. E-7209

ORDER AUTHORIZING ISSUANCE OF PROMISSORY NOTES

(Issued April 12, 1965)

Community Public Service Company (Applicant), filed an application on February 15, 1965, for authorization pursuant to Section 204 of the Federal Power Act to issue short-term, unsecured Promissory Notes in the maximum principal amount of $8,000,000.

Applicant is incorporated under the laws of the State of Texas and is authorized to do business in the State of New Mexico with its principal business office at Fort Worth, Texas. Applicant is engaged primarily in the generation, purchase, distribution and sale of electricity and the purchase, distribution and sale of natural gas, and furnishes electricity to 103 communities in Texas and 10 communities in New Mexico. Gas is supplied to 3 communities in Texas.

According to the application, the short-term Promissory Notes proposed for execution in the maximum aggregate principal amount of $8,000,000 will be issued and dated at such time or times as short-term bank loans are made or renewed on or before June 30, 1966. The Applicant represents that the proposed securities will evidence loans from Fort Worth and New York City banking institutions and that the maturity of each note will not exceed 120 days from its date. The Notes are to bear interest at a rate in effect for such loans on dates of issue or renewal in Fort Worth and New York.

Applicant states that the purpose of the proposed short-term bank loans is the reimbursement of the treasury of Applicant for expenditures for the construction, completion, extension or improvement of its facilities. According to the application, these expenditures for the Applicant's 1965 construction program will total $11,383,000. Principal items in Applicant's program are: $3,105,500 for transmission line facilities; $1,532,000 for three 138/69 kv transmission substations with total capacity of 400 Mva; $5,327,500 for electric distribution facilities; $1,279,000 for general electric facilities, and $139,000 for gas distribution facilities.

Written notice of the application has been given to the New Mexico Public Service Commission and to the Texas Railroad Commission and to the Governor of each of those States. Notice has also been given by publication in the Federal Register on February 25, 1965 (30 F.R. 2485), stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest on or before March 10, 1965, with the Federal Power Commission, Washington, D.C., 20426. No protest, petition, or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued April 24, 1963, *Community Public Service Company*, Docket No. E-7084 (29 FPC 829).

(2) The proposed issuance of Promissory Notes in the aggregate principal amount of $8,000,000, all as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) The proposed issuance of Promissory Notes in the aggregate principal amount of $8,000,000, all as described above, will be in excess of 5% of the par value of the other securities of Applicant, and, therefore, will not be exempt by virtue of Section 204(e) from the requirements of Section 204(a) of the Act.

(4) Applicant is not organized and operating in a State, under the laws of which the security issue here involved is regulated by a State Commission within the meaning of Section 204(f) of the Act, and the proposed issuance is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(5) The proposed issuance of Promissory Notes will be exempt from the competitive bidding requirements of Section 34.1a of the Commission's Regulations under the Federal Power Act by reason of Paragraph 34.1a(a)(2) thereof.

(6) The proposed issuance of securities, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility, and which will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purposes.

(7) The period of public notice given in this matter is sufficient.

The Commission orders:

(A) The proposed issuance of Promissory Notes in the aggregate principal amount of $8,000,000 outstanding at any one time, whether an original issue or a renewal note, upon the terms and conditions and for the purposes set forth in the application, all as described above, is hereby authorized, subject to the provisions of this order.

(B) This authorization is expressly conditioned upon the final maturity of all notes to be issued pursuant thereto being not later than October 30, 1966.

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost or any other matter whatsoever now pending or which may come before this Commission.

(D) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect to any security to which this order relates.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

KANSAS-NEBRASKA NATURAL GAS COMPANY, INC., COMPLAINANT v. COLORADO INTERSTATE GAS COMPANY, DEFENDANT, DOCKET NO. RP65-43

ORDER GRANTING MOTION FOR CLARIFICATION OF OPINION AND ORDER

(Issued April 12, 1965)

The Commission on February 18, 1965, issued its Opinion No. 450 and accompanying order, in Docket No. CP64-294, 33 FPC 281, in which we granted a certificate of public convenience and necessity to Colorado Interstate Gas Company (Colorado) to sell and deliver gas to Cheyenne Light, Fuel & Power Company for distribution in Pine Bluffs, Wyoming, in accordance with Colorado's Rate

Schedule P-1. In that proceeding, Kansas-Nebraska Natural Gas Company, Inc. (KNCO), which purchases gas under Colorado's Rate Schedule P-2, objected to our granting the certificate upon grounds of undue discrimination in rate provisions. In our opinion and order, in view of these objections by KNCO, we also instituted this proceeding as an investigation into the propriety of Colorado's Rate Schedule P–2, stating that we would treat KNCO's allegations as a formal complaint herein.

On March 9, 1965, KNCO filed a notice seeking clarification of the finding and ordering paragraphs of our Opinion and accompanying order. KNCO's motion requests that the finding and ordering paragraphs be modified so as to permit it to present evidence covering "all aspects of the P-2 rate schedule" in order that we may determine, in words of Opinion No. 450, "the propriety of Colorado Interstate's P-2 rate schedule" and "the tariff provisions, rules and regulations which the Commission should prescribe . . . for service to Kansas-Nebraska by Colorado Interstate." KNCO points to the words of our finding and ordering paragraphs in Opinion No. 450 which appear to restrict the investigation to the "propriety of the 75-percent take-or-pay provisions."

On March 10, 1965, Colorado filed an answer to KNCO's motion for clarification, taking the position that our Opinion No. 450 and order need no clarification. Colorado states that the gravamen of KNCO's complaint in the certificate case was that the 75-percent take-or-pay provision was unfair and that the volumes of gas KNCO should be required to purchase from Colorado should be reduced.

It was our intention to permit KNCO to present evidence in support of the same allegations it made in the certificate proceeding. Thus, KNCO's brief before the Presiding Examiner, as well as its brief to us upon exceptions to his decision, relate to the billing demand ratchet contained in Rate Schedule P-1, and the minimum bill provisions of both rate schedules, P-1 and P-2. It, therefore, appears appropriate to modify our order as provided herein.

The Commission orders:

(A) Finding paragraph (2) of our order accompanying Opinion No. 450 is hereby modified by omitting therefrom the phrase "the 75-percent take-or-pay provision" and by substituting therefor the phrase "the billing determinants and minimum bill provisions of Colorado's Rate Schedule P-2 with particular reference to KNCO's allegations of discrimination in service offered another Buyer under Colorado's Rate Schedule P-1."

(B) Ordering Paragraph (C) of our order accompanying Opinion No. 450 is hereby modified by omitting therefrom all language *after* the phrase "a public hearing shall be held concerning the matters involved to determine", and by substituting for the omitted words the following phrase:

> the limited issue raised by KNCO's complaint made in Docket No. CP64–294, concerning the propriety of the billing determinants and minimum bill provisions of Colorado's Rate Schedule P–2, applicable to sales to KNCO from Colorado's 12-inch line involved herein, and whether such provisions are just and reasonable and not unduly discriminatory within the meaning of the Natural Gas Act, with particular reference to KNCO's allegations of discrimination in service offered another Buyer under Colorado's Rate Schedule P-1.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TOWN OF MEIGS, GEORGIA, DOCKET NO. CP65-205

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued April 12, 1965)

On January 7, 1965, the Town of Meigs, Georgia, filed in Docket No. CP65-205 an application as supplemented on January 13, 1965, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing South Georgia Natural Gas Company (South Georgia) to make two physical connections of its transmission facilities with Applicant's proposed distribution facilities and to sell and deliver natural gas to Applicant for distribution and resale to residential and commercial customers located in the Town of Meigs and the area adjacent thereto, all as more fully set forth in the application on file with the Commission.

The estimated volumes of natural gas involved to meet Applicant's annual and peak day requirements for the initial three year period of proposed operations are stated to be: .

	1st year	2d year	3d year
Annual (Mcf)	158,419	159,766	161,115
Peak day (Mcf)	225	242	258

The estimated cost of Applicant's proposed distribution system is $200,000, to be financed with a Public Facility Loan from the Housing and Home Finance Agency.

Applicant proposes to receive gas at two points on South Georgia's 8⅝-inch high pressure line. At Delivery Point No. 1 South Georgia will construct 1.7 miles of 3½-inch line and a meter and regulating station at the town border to serve Applicant's proposed distribution system. At Delivery Point No. 2 South Georgia will construct a meter and regulating station, which will be paid for by Applicant, to serve Applicant's industrial customer, Fuller's Earth Products, Inc. The total estimated cost to South Georgia is $34,000.

On January 25, 1965, South Georgia filed its answer with the Commission and stated that it has no objections to providing the requested service.

Due notice of the filing of the application and opportunity for hearing thereon was published in the Federal Register on January 20, 1965 (30 F.R. 658). No protest, petition to intervene or notice of intervention has been filed.

The Commission finds:

(1) South Georgia Natural Gas Company, a Georgia corporation with its principal place of business in Thomasville, Georgia, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order in Docket No. G-1915, issued August 3, 1954 (13 FPC 666).

(2) Applicant is a municipality in the State of Georgia and is authorized to construct and operate the proposed facilities and to distribute and sell natural gas to inhabitants of the community along its proposed distribution system.

(3) It is necessary and desirable in the public interest that South Georgia be directed to establish physical connection of its transportation facilities with the facilities proposed by Applicant and to sell and deliver to Applicant its daily

and annual requirements of natural gas, as set forth in the application and as hereinafter ordered and conditioned.

(4) The requirement that South Georgia serve the Applicant, as requested, will not place an undue burden upon it nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) South Georgia Natural Gas Company be and is hereby directed to establish connections of its natural gas transmission system with the facilities of the Applicant and to sell and deliver natural gas to Applicant, all as hereinbefore described and as more fully described in the application.

(B) South Georgia Natural Gas Company shall execute and file with the Commission a service agreement with Applicant in accordance with the Commission's Regulations.

(C) Applicant shall be prepared to receive natural gas from South Georgia within one year from the date of this order.

(D) South Georgia Natural Gas Company shall notify the Commission of the commencement of service within 10 days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SACRAMENTO MUNICIPAL UTILITY DISTRICT, PROJECT NO. 2101

ORDER APPROVING REVISED EXHIBIT L DRAWINGS

(Issued April 12, 1965)

On March 22, 1965, Sacramento Municipal Utility District, licensee for Project No. 2101, filed for Commission approval revised Exhibit L drawings showing the final design for the Slab Creek Dam. The filing was pursuant to Article 26 of the license.

The revised drawings show a proposed concrete arch dam about 245 feet high and 830 feet long with a 462-foot long uncontrolled spillway section provided in the central portion of the crest creating a reservoir with a normal pool elevation of 1,850 feet and gross storage of 16,600 acre-feet. The reservoir will serve as an afterbay for the Camino powerhouse and as a forebay for the White Rock powerhouse.

Further geologic investigations dictated the movement of the left abutment of the dam 90 feet upstream. This, together with refinement in design, resulted in an increase in the dam's height from 240 feet to 245 feet (with no change in the crest elevation) and an increase in its length from 820 feet to 830 feet. The increased height of the dam will not increase the pool elevation over that presently authorized. The geologic investigations have established the competency of the foundation and abutment rock.

Stress analyses were made of the concrete arch dam under loading conditions which considered normal and maximum hydrostatic forces, temperature effect and seismic forces. The stresses were found to be within allowable limits.

The above-mentioned project changes have been reviewed by our staff and have been found to be safe and stable.

The Commission finds:

The following described revised Exhibit L drawings conform to the Commission's rules and regulations and should be approved as part of the license for the project, and the Exhibit L drawings mentioned herein as being superseded should be eliminated from the license:

Exhibit L–113 (FPC No. 2101–196) showing "Slab Creek Dam Plan," superseding Exhibit L–89 (FPC No. 2101–148);

Exhibit L–114 (FPC No. 2101–197) showing "Slab Creek Dam Upstream Elevation and Sections," superseding Exhibit L–90 (FPC No. 2101–149) and

Exhibit L–115 (FPC No. 2101–198) showing "Slab Creek Dam Geometry."

The Commission orders:

The revised Exhibit L drawings described in the above findings are hereby approved as part of the license for Project No. 2101, and the superseded Exhibit L drawings described in the same finding are hereby eliminated from the license for the project.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

AREA RATE PROCEEDING, ET AL. (HUGOTON-ANADARKO AREA). DOCKET NO. AR64–1, ET AL.

ORDER DENYING APPEAL

(Issued April 13, 1965)*

Dorchester Gas Producing Company (Dorchester), on March 12, 1965, appealed a ruling of the presiding examiner which denied Dorchester permission to adduce herein individual company cost of service data for the purpose of showing that under the *Sierra* doctrine[1] it is entitled to a higher rate under its Rate Schedule No. 2 than is contractually authorized. Dorchester's request and the examiner's ruling were made in the pre-hearing stages of this proceeding. The examiner decided that the issues of elevation of fixed gas purchase contracts and the applicability of the *Sierra* doctrine should be resolved on an area's basis and not on an individual company basis, citing the Commission's order issued January 19, 1965, 33 FPC 88, in Docket No. RI64–749, which denied reconsideration of Dorchester's petition for a general rate investigation. The examiner also held that the relief sought here by Dorchester was substantially the same as that previously denied to other parties by the Commission in this same proceeding by order issued January 30, 1964, 31 FPC 197.

In its appeal Dorchester claims, among other things, that (1) the Commission's January 19, 1965, order did not purport to foreclose the presentation of its individual company data in the area proceeding; and (2) the relief sought by it is not substantially the same as that previously sought by other parties and denied by order of the Commission issued January 30, 1964, inasmuch as it is seeking relief under the *Sierra* doctrine from alleged confiscation.

Dorchester's motion misconceives the holding of our order of January 19, 1965, in Docket No. RI64–749. As we made clear therein, Dorchester is free, either on its own or in concert with producers similarly situated, to attempt to show in the present proceeding that the public interest would be served, within the meaning of the *Sierra* doctrine and in context of an area price proceeding, by Commission action pursuant to Section 5 of the Natural Gas Act, to make possible producer filings of rate increases up to the price determined to be just and reasonable for similar gas despite existing contractual inhibitions on such filings. *Sierra* makes

---

*Reconsideration denied June 7, 1965 [unreported]. Petition to review dismissed, *sub nom. Dorchester Gas Producing Co.* v. *F.P.C.*, 353 F. 2d 162 (CA3–1965), cert. denied, 383 U.S. 969 (1966).

[1] *F.P.C.* v. *Sierra Pacific Power Co.*, 350 U.S. 348.

clear, however, that even in the context of individual company rate making for pipelines or public utilities the issue is not whether the contractual limitations on rate filings will result in affording the company less than a fair return, but whether the rate "is so low as to adversely affect the public interest" (350 U. S. 348 at 355). Thus, without here determining what showing would be essential to "the protection of the public interest, as distinguished from the private interests" of Dorchester or other producers in context of an area rate proceeding it is clear that introduction of an individual company cost of service by Dorchester would not be of any greater relevance to a determination of the *Sierra* issue than to the fixing of the area rate itself.

To the extent that Dorchester is claiming that it is legally or equitably entitled to special relief over and beyond that to be afforded all other respondents who may have contractual inhibitions on filing rates up to the levels specified in our area rate determination, it is sufficient to add that Dorchester must await the fixing of the area rate or rates before it can properly present such a claim. This does not mean that having deferred Dorchester's claim (in Docket No. RI64–749) for an immediate proceeding to secure relief under the *Sierra* case in our order of January 19, 1965, for consideration as part of this proceeding, we are now postponing any possibility of relief for still an additional period of time. As indicated, Dorchester will be able to make any relevant showing indicating that as part of our area price determination there are public interest why producers should be permitted to file increases up to the general area rate or at least up to some specified level, their contracts notwithstanding, and we would, in any event, not be in a position to determine whether Dorchester was entitled to some special exception to the area rate until it had been fixed.

The Commission orders:

For the reasons set forth above, Dorchester's appeal from the examiner's ruling of March 9, 1965, is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CITIES SERVICE GAS COMPANY AND NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP64–89

ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 13, 1965)

On December 1, 1964, Cities Service Gas Company (Cities Service) and Natural Gas Pipeline Company of America (Natural) filed in Docket No. CP64–89, a joint application to further amend the order of the Commission issued on January 2, 1964, 31 FPC 3, as amended on August 14, 1964, 32 FPC 618, authorizing Cities Service and Natural, among other things, to construct and operate certain facilities described therein, and to exchange up to 40,000 Mcf of natural gas daily for a period terminating May 1, 1965 under the terms of a Gas Exchange Agreement dated September 30, 1963, and amended April 13 and September 24, 1964.

The application to amend filed December 1, 1964, seeks modification of the Commission's said order so as (1) to extend the period during which Cities Service and Natural may exchange natural gas pursuant to the Gas Exchange

Agreement dated September 30, 1963, as amended, to May 1, 1970,[1] (2) authorize the construction, installation, and operation of certain pipeline and compressor facilities to provide for an additional delivery point (Pampa Exchange Point) of natural gas now delivered by Cities Service to Natural, (3) authorize the replacement and abandonment of certain compressor facilities of Cities Service, and (4) authorize the retention of the Pampa Exchange Point facilities as an emergency interconnection after the May 1, 1967 exchange expiration date.

Cities Service proposes to (1) install and operate two 1,000 #W.P. compressors and appurtenant facilities, together with the addition of a gas cooler at its Pampa Compressor Station in Gray County, Texas, (2) construct and operate approximately 0.57 mile of 10-inch pipeline from its Pampa Compressor Station to a point of interconnection with Natural's 26-inch pipeline (Pampa Exchange Point), located in Gray County, Texas, (3) construct and operate metering and regulating facilities to measure gas volumes delivered to Natural at the interconnection of Cities Services' proposed 10-inch pipeline and Natural's 26-inch pipeline in Gray County, Texas, and (4) abandon two 500 #W.P. compressors presently installed at its Pampa Compressor Station in Gray County, Texas (certificated December 28, 1943, in Docket No. G–298).

Natural proposes to install and operate a side-tap on its 26-inch pipeline at a point located in Gray County, Texas, to receive natural gas from Cities Service at the Pampa Exchange Point.

The total cost of the proposed facilities is estimated to be $88,660, of which $84,960 is attributable to Cities Service and $3,700 to Natural, all of which will be defrayed from their respective current funds.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on December 16, 1964 (29 F.R. 17854). No protest or petition to intervene has been filed in the proceeding concerning this amendment.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require that the order of the Commission issued on January 2, 1964, as amended on August 14, 1964, be further amended so as to (1) extend the period during which Cities Service and Natural may exchange natural gas to May 1, 1967, (2) authorize the proposed installation and operation of facilities by Cities Service and Natural, and abandonment of certain facilities by Cities Service, and (3) authorize the retention of the Pampa Exchange Point facilities as an emergency interconnection after May 1, 1967, expiration date.

The Commission orders:

(A) The order of the Commission issued on January 2, 1964, as amended on August 14, 1964, be further amended so as to authorize (1) the extension of the period during which Cities Service and Natural may exchange natural gas under their exchange agreement dated September 30, 1963, as amended, to May 1, 1967, (2) the installation and operation of facilities to provide an additional delivery point (Pampa Exchange Point) for natural gas now delivered by Cities Service to Natural, (3) the replacement and abandonment of certain compressor facilities of Cities Service, and (4) the retention of the Pampa Exchange Point facilities as an emergency interconnection after the May 1, 1967 exchange expiration date.

(B) In all other respects said order shall remain in full force and effect.

---

[1] Modified by letter dated February 25, 1965, filed with the Commission on March 2, 1965, indicating acceptance of extension of duration of gas exchange period to May 1, 1967, instead of May 1, 1970.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP65-211

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued April 13, 1965)

On January 12, 1965, El Paso Natural Gas Company (Applicant) filed in Docket No. CP65-211 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain natural gas facilities, all as more fully set forth in the application.

Specifically, Applicant seeks permission and approval to abandon by sale to Western Gas Service Company (Western), approximately 0.617 mile of 4½-inch O. D. pipeline, a tap thereon and necessary appurtenances in Luna County, New Mexico, known as the Deming lateral, pursuant to an agreement between Applicant and Western dated December 2, 1964. Western will convert the Deming lateral into a distribution line in order to expand its natural gas service. The agreed consideration is stated to be $1,000.

Due notice of the filing of the application was published in the Federal Register on January 23, 1965 (30 F.R. 768). No protest, petition to intervene, notice of intervention or request for hearing has been filed in this proceeding.

At a hearing held on April 9, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 29, 1942, in Docket Nos. G-242 and G-257 (3 FPC 851).

(2) The facilities to be abandoned, as hereinbefore described and as more fully described in the application in this proceeding, are subject to the jurisdiction of the Commission and abandonment of such facilities by Applicant is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The abandonment hereinbefore described, as more fully described in the application in this proceeding, is permitted by the public convenience and necessity and an order approving same should be issued as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment by El Paso Natural Gas Company of the facilities hereinbefore described, as more fully described in the application in this proceeding, be and the same are hereby granted.

(B) Applicant shall advise the Commission of the date of abandonment of the facilities within 10 days thereafter.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

MICHIGAN GAS STORAGE COMPANY, DOCKET NO. CP65–245

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 13, 1965)

On February 19, 1965, Michigan Gas Storage Company (Applicant) filed in Docket No. CP65–245 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the operation of existing facilities for the transportation of additional volumes of natural gas wholly within the State of Michigan for and in behalf of Consumers Power Company (Consumers), all as more fully set forth in the application.

Specificially, Applicant proposes to transport for and in behalf of Consumers up to 250,000 Mcf of natural gas per day commencing April 1, 1965, and up to 275,000 Mcf per day commencing November 1, 1965.

By Commission order issued May 4, 1964, in Docket No. CP64–128, Applicant was authorized to transport up to 225,000 of natural gas per day for Consumers, commencing November 1, 1964. The gas involved is supplied by Trunkline Gas Company (Trunkline). Applicant states that on July 2, 1964, Consumers and Trunkline entered into a new agreement providing for the sale by Trunkline to Consumers of 250,000 Mcf per day commencing April 1, 1965, and 275,000 Mcf per day commencing November 1, 1965.[1] Accordingly, Applicant requests authorization herein to transport these increased volumes from Trunkline to Consumers.

The proposed increased transportation service will not require any additional facilities and all costs arising from said service will be passed on to Consumers pursuant to Applicant's cost-of-service tariff.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 9, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Michigan Gas Storage Company, a Michigan corporation having its principal place of business in Jackson, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 3, 1946, in Docket No. G–731 (5 FPC 965).

(2) The transportation of natural gas hereinbefore described, as more fully described in the application in this proceeding, is to be in interstate commerce, subject to the jurisdiction of the Commission, and such transportation by Applicant is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

---

[1] By Commission order issued March 15, 1965, 33 FPC 567, in Docket No. CP65–117, Trunkline was authorized to make the subject increased sale to Consumers.

(4) The proposed transportation of natural gas by Applicant is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Michigan Gas Storage Company, to transport natural gas for and in behalf of Consumers Power Company as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CI65–858

DECLARATORY ORDER WITH RESPECT TO COVERAGE UNDER RATE SCHEDULE

(Issued April 13, 1965)

Panhandle Eastern Pipe Line Company (Panhandle) on March 2, 1965, filed a petition in Docket No. CI65–858 for a declaratory order pursuant to Section 1.7(c) of the Commission's Rules of Practice and Procedure requesting the Commission to determine that Panhandle's interest in sales of gas from the Reiswig #1–1 well, Section 1–T3N–R17ECM, in Texas County, Oklahoma and Klassen #1–17 well, Section 17–T6N-R19ECM, in Texas County, Oklahoma to Northern Natural Gas Company (Northern) by Hugoton Plains Gas and Oil Company (Hugoton) is covered by Hugoton's FPC Gas Rate Schedule No. 1, particularly Supplement No. 15 thereto. Supplement No. 15 contains the 15.75¢ settlement rate approved by the Commission in Docket No. RI60–102 by order issued October 8, 1963, 30 FPC 973, for Hugoton's sales to Northern. Panhandle indicates that Hugoton has taken the position that there is doubt as to whether it can lawfully make payments to Panhandle on the basis of the 15.75¢ per Mcf settlement rate effective as of April 7, 1960. Hugoton apparently believes that Panhandle must make its own rate filing before it is entitled to payment on the basis of the 15.75¢ settlement rate. Hugoton, however, has not filed a response to Panhandle's petition.

Panhandle and Hugoton own an undivided interest of 25% and 75%, respectively, in the Reiswig well. An agreement of April 20, 1951, between the parties provided that the price to be paid by Hugoton to Panhandle was 9.25¢ per Mcf at 16.4 psia until January 1, 1960, and thereafter the price was to be 1.25¢ below the price paid by Northern to Hugoton with a minimum of 9.25¢ per Mcf, subject to a Btu adjustment.

Panhandle and Hugoton along with Texaco Inc. each own an undivided interest of 19.1479%, 67.1374% and 13.714% respectively, in the Klassen well. An agreement of August 10, 1951, between Panhandle and Hugoton provided that the price to be paid by Hugoton to Panhandle was 8.26¢ per Mcf at 14.65 psia until January 1, 1960, and thereafter the price was to be 1.12¢ per Mcf below the price paid by Northern to Hugoton with a minimum of 8.26¢ per Mcf, subject to a Btu adjustment.

In support of its petition, Panhandle states, among other things, that it has always considered itself covered by Hugoton's certificate authorization and the rate schedule filed by Hugoton in connection therewith, as supplemented. Panhandle points out that it has always received payments from Hugoton in the past on the basis of Hugoton's filings under its FPC Gas Rate Schedule No. 1, and that communications between Hugoton and Panhandle reasonably led it to believe that its interest was covered by Hugoton filings.

While Hugoton's FPC Gas Rate Schedule No. 1 does not specifically refer to Panhandle's interest it must be deemed to have covered Panhandle's interest. Hugoton is in no position to question Panhandle's right to be covered by its rate schedule in light of previous communications between Panhandle and Hugoton and its prior practice of making payments to Panhandle on the basis of its own rate filings. It is significant in this connection that Panhandle never sought certificate authorization or attempted to file its own rate schedule for the sale involved here. We therefore conclude that Panhandle is and always has been covered under Hugoton's FPC Gas Rate Schedule No. 1.

The Commission orders:

For the reasons set forth above, we hereby determine that Panhandle's interest in the above-designated properties is and always has been covered under Hugoton's FPC Gas Rate Schedule No. 1.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, CP64–270; SOUTHERN NATURAL GAS COMPANY, CP64–259, CP64–314; EAST TENNESSEE NATURAL GAS COMPANY, CP65–66; TENNESSEE GAS TRANSMISSION COMPANY, CP64–165; CITY OF BUFORD, GEORGIA, CP65–11, CP65–20; CITY OF SUGAR HILL, GEORGIA, CP65–10, CP65–19; CITY OF AUSTELL, GEORGIA, CP65–74

ORDER GRANTING REQUEST FOR TEMPORARY AUTHORIZATION

(Issued April 13, 1965)

By a series of orders, the last of which was issued on October 6, 1964, the matters presented by the above-designated docketed applications were consolidated for formal hearing. In the main they consist of competitive proposals by Transcontinental Gas Pipe Line Corporation (Transco), Southern Natural Gas Company (Southern), and East Tennessee Natural Gas Company (East Tennessee) to construct facilities so as to meet the increased natural gas requirements of Chattanooga Gas Company (Chattanooga). East Tennessee is currently the sole supplier of Chattanooga since neither Transco nor Southern have any facilities into the Chattanooga area. The hearing in this proceeding, which commenced on November 9, 1964, is now nearing its conclusion.

Southern, in its application in Docket No. CP64-314, seeks authorization to install, construct, and operate (1) 94,870 compressor horsepower at new and existing stations and (2) approximately 195 miles of various-sized new pipeline and pipeline loops, and appurtenant facilities, all at an estimated cost of $28,377,920. These facilities, more fully depicted on Exhibit A appended hereto, will increase Southern's daily design delivery capacity by approximately 180,000 Mcf per day. Southern proposes to utilize the facilities so as to make additional sales of 146,165 Mcf per day to both new and existing customers. Of this amount Southern has allocated 24,770 to Atlanta Gas Light Company (Atlanta), 5,000 Mcf to The Water, Light and Sinking Fund Commission of Dalton, Georgia (Dalton), and 29,000 Mcf to Chattanooga. Although all three of the major applicants propose to serve the increased requirements of Chattanooga, only Southern and Transco are vying to supply the increased requirements of Atlanta and Dalton.

On February 23, 1965, in view of the virtual impossibility of the completion of the proceeding which would permit the timely issuance of permanent authorization to construct the facilities necessary to meet its existing customers' increased requirements for the coming heating season, Southern filed a request for temporary authorization to construct that portion of the facilities asked for in its application in Docket No. CP64-314, which it alleges are unassociated with its competitive project to serve Chattanooga. The request relates to the construction of the following facilities, more fully depicted on Exhibit B appended hereto, which are estimated to cost $9,739,000:

(a) One 6,500 horsepower compressor unit at each of Southern's proposed Bay Springs, York, Selma, and Auburn compressor stations and one 3,400 horsepower compressor unit at its proposed Hall Gate station, all on Southern's South Line; and

(b) One 6,500 horsepower compressor unit at its proposed Pearl River station and two 2,500 horsepower compressor units at its proposed Lacombe station, both stations being located on Southern's South Louisiana supply system.

On March 16, 1965, Transco filed an answer to Southern's request for temporary authorization. Transco does not oppose the grant of such authorization provided that it is without prejudice to the Commission's final determination to be made on the record in the instant consolidated proceeding. The inclusion of such conditioning language, under like circumstances, is customary, and we shall so order here. Additionally, Transco argues that certain volumetric limitations should be imposed on Southern's proposed increased deliveries to Dalton and Atlanta for the 1965-1966 winter through the use of the facilities sought to be constructed under the instant request for temporary authorization. Since we do not here propose to grant any authorization for the operation of the requested facilities we need not decide the merits of Transco's latter argument at this time.

On March 5, 1965, East Tennessee filed an answer objecting to the grant of the requested temporary authorization for the facilities enumerated under (a) above. Its arguments, in the main, other than those covered above, are twofold.

First, East Tennessee contends that Southern has not demonstrated a need to commence construction of the requested facilities by April 1, 1965, so as to be ready to place such facilities in service during the coming heating season should the Commission so authorize. East Tennessee does not, in its answer contest Southern's allegations as to the increased requirements of its existing customers for the coming heating season. Although, as heretofore noted, we are not authorizing the use of the facilities requested, we do not, under the given circumstances, deem a request of six months in which to undertake an orderly construction program and thereby avoid excess costs to be unreasonable.

We will, however, require that the costs associated with the construction of these facilities shall not be included in Southern's rate base in the event that permanent certification is not granted.

Alternatively, East Tennessee contends that, by reason of Southern's operational flexibility, increased volumes made available by the proposed facilities to be constructed under the temporary authorization could be utilized to supply the competitive markets and thereby prejudice East Tennessee's application in the instant consolidated proceeding. The only competitive market that East Tennessee is concerned with is in the Chattanooga area. Since no authorization is here being sought to construct any facilities so as to extend Southern's system into that area the contention that it may affect East Tennessee is wholly without merit.

The Commission finds:

Based on the allegations of Southern for a temporary certificate of public convenience and necessity and the further matters discussed above, the request for construction only of the above-enumerated facilities should be granted.

The Commission orders:

(A) The application of Southern Natural Gas Company in Docket No. CP64–314 for temporary authorization for construction only of the limited facilities enumerated above, and as more fully depicted in Exhibit B appended hereto, is hereby granted.

(B) The grant of the instant temporary authorization is without prejudice to such final determination of the applications in the proceeding in Transcontinental Gas Pipe Line Corporation, *et al.*, Docket No. CP64–270, *et al.*, as the record may require.

(C) The temporary certificate issued herein and the rights granted hereunder are hereby conditioned upon Southern's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(1) and (c)(4) of Section 157.20 of such Regulations. Should the Commission deny permanent certification of the facilities herein authorized to be constructed under temporary grant, all costs associated with the construction of said facilities shall not be included in Southern's rate base.

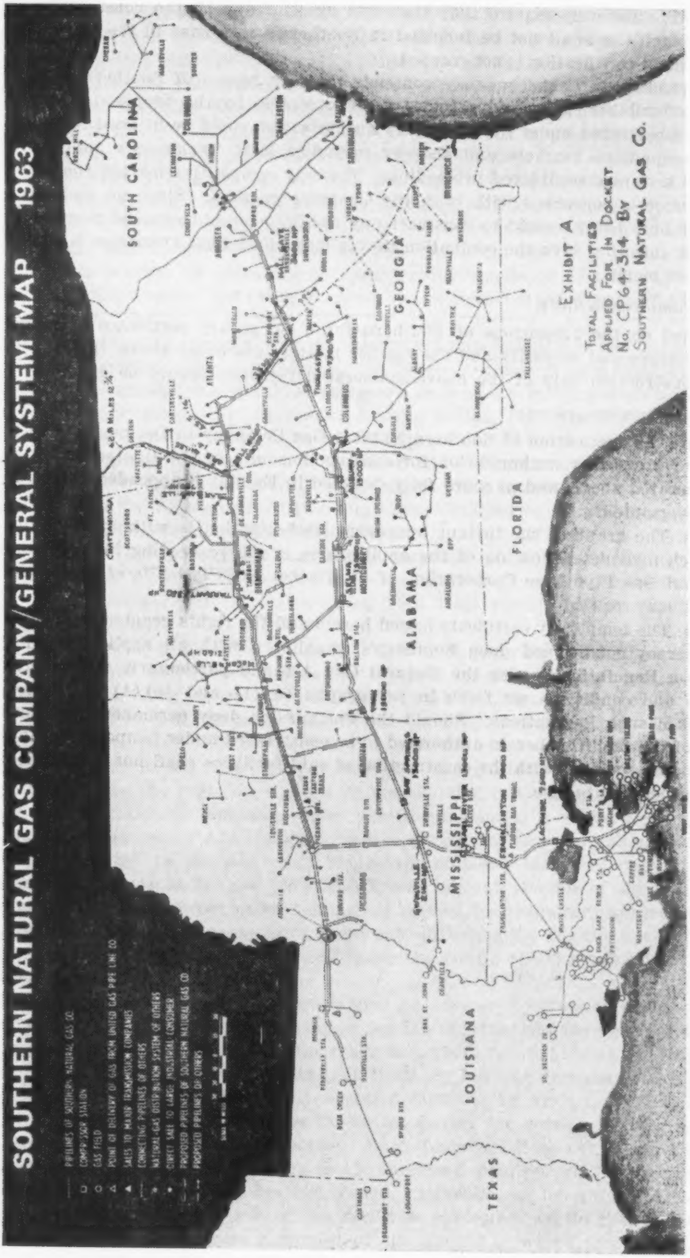

SOUTHERN NATURAL GAS COMPANY/GENERAL SYSTEM MAP 1963
EXHIBIT A
TOTAL FACILITIES
APPLIED FOR IN DOCKET
No. CP64-314 BY
SOUTHERN NATURAL GAS Co.
SOUTH CAROLINA
GEORGIA
ALABAMA
FLORIDA
MISSISSIPPI
LOUISIANA
TEXAS
ATLANTA
CHATTANOOGA
BIRMINGHAM
AUGUSTA
CHARLESTON
SAVANNAH
COLUMBUS
TALLAHASSEE
PIPELINES OF SOUTHERN NATURAL GAS CO.
COMPRESSOR STATION
GAS FIELD

EXHIBIT A.—Total facilities applied for in Docket No. CP64–314 by Southern Natural Gas Co.

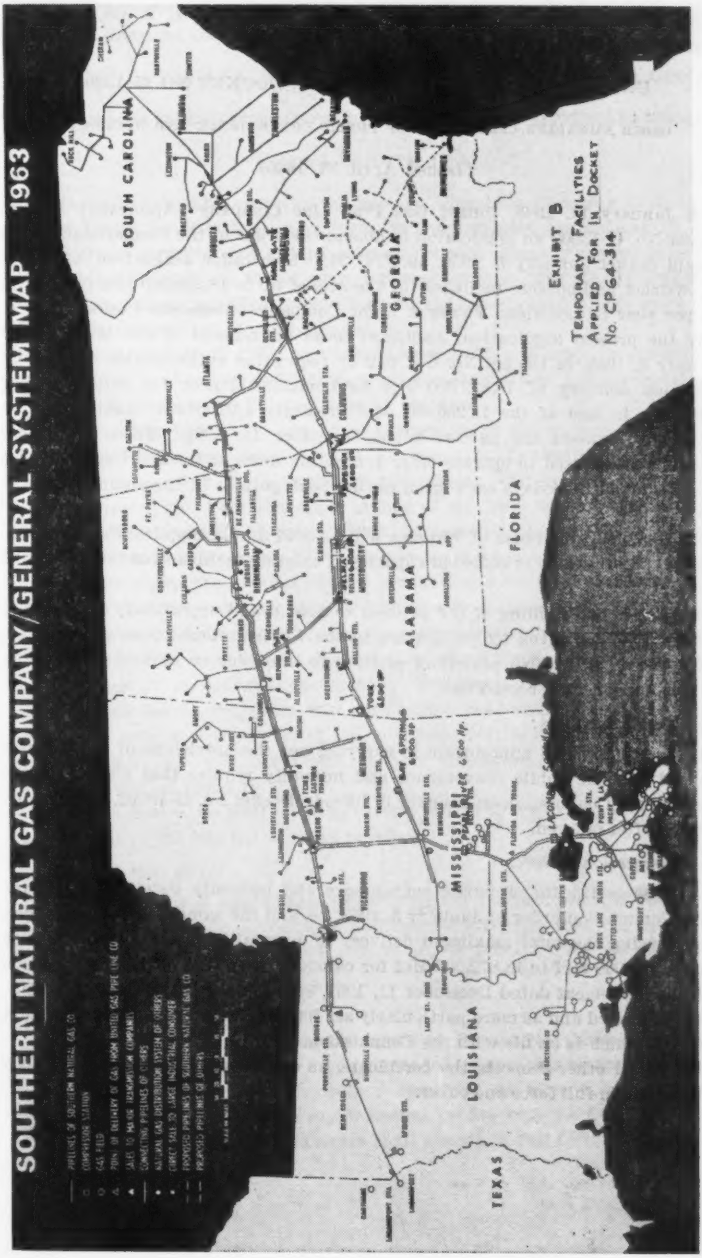

SOUTHERN NATURAL GAS COMPANY/GENERAL SYSTEM MAP 1963
PIPELINES OF SOUTHERN NATURAL GAS CO
COMPRESSOR STATION
GAS FIELD
POINT OF DELIVERY OF GAS FROM UNITED GAS PIPE LINE CO
SALES TO MAJOR TRANSMISSION COMPANY
CONNECTING PIPELINES OF OTHERS
NATURAL GAS DISTRIBUTION SYSTEM OF OTHERS
DIRECT SALE TO LARGE INDUSTRIAL CONSUMER
PROPOSED PIPELINES OF SOUTHERN NATURAL GAS CO
PROPOSED PIPELINES OF OTHERS
SOUTH CAROLINA
GEORGIA
ATLANTA
COLUMBUS
ALABAMA
BIRMINGHAM
SELMA
FLORIDA
MISSISSIPPI
LOUISIANA
TEXAS
EXHIBIT B
TEMPORARY FACILITIES
APPLIED FOR IN DOCKET
No. CP64-314

EXHIBIT B.—Temporary facilities applied for in Docket No. CP64-314.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. G-13002

ORDER AMENDING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 13, 1965)

On January 14, 1965, United Gas Pipe Line Company (Applicant) filed in Docket No. G-13002 an application to amend the order of the Commission issued in said docket January 3, 1958, 19 FPC 31, which order authorized Applicant to construct and operate facilities for the sale of up to 18,250,000 Mcf of natural gas per year to Louisiana Power & Light Company (Louisiana Power).

By the present application, Applicant seeks amendment of the order issued January 3, 1958, in Docket No. G-13002 by requesting authorization for a total maximum delivery of 18,872,000 Mcf to Louisiana Power for calendar year 1965 only, in lieu of the 18,250,000 Mcf presently authorized, pursuant to an agreement between the parties dated December 11, 1964. These additional volumes will be used to operate older generating units at the Sterlington Power Plant for about five days each week during peak periods of the summer months in 1965.

The temporary increase of volumes will be sold during Applicant's off-season. Applicant states there is sufficient capacity in existing facilities for this increased service.

Due notice of the filing of the petition to amend and opportunity for hearing thereon has been given by publication in the Federal Register on January 29, 1965 (30 F.R. 970). No protest or petition to intervene or request for hearing has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the certificate issued by the Commission on January 3, 1958, in Docket No. G-13002, be amended as hereinafter ordered.

The Commission orders:

(A) The certificate of public convenience and necessity issued to Applicant in the Commission order of January 3, 1958, be, and the same is hereby amended by increasing the total maximum delivery of natural gas to Louisiana Power from 18,250,000 Mcf to 18,872,000 Mcf for calendar year 1965 only, in accordance with the agreement dated December 11, 1964, between the parties, all as hereinbefore described and as more particularly set forth in the aforementioned motion to amend which is on file with the Commission.

(B) In all other respects the certificate, as amended in Docket No. G-13002 shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

AMERICAN LOUISIANA PIPE LINE COMPANY, DOCKET NO. CP64–154

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 14, 1965)

On December 24, 1964, American Louisiana Pipe Line Company (Petitioner) filed in Docket No. CP64–154 a petition, as supplemented on January 13, 1965, to amend the certificate of public convenience and necessity issued in Docket No. CP64–154, et al., by Commission order of June 2, 1964, 31 FPC 1333, by authorizing certain modifications in compressor horsepower, all as more fully set forth in the petition as supplemented.

Said order of June 2, 1964, authorized, among other things, the construction and operation by Applicant of four new compressor stations and the installation of additional compressors at three existing stations.

By the instant petition to amend, Petitioner seeks authorizations to install: (1) four 2,700 hoursepower units at Station 1 in Louisiana in lieu of the five 2,000 horsepower units presently authorized; (2) five 2,500 horsepower units at Station No. 4 in Mississippi in lieu of six 2,000 horsepower units presently authorized; and (3) four 2,7000 horsepower units at Station No. 7 in Kentucky in lieu of the five 2,000 horsepower units presently authorized.

Petitioner states that manufactures' production schedules would not permit delivery of the large number of 2,000 horsepower units in time to be available for the 1964–65 heating season, and that the substitution of fewer units of higher horsepower enables the construction schedules to be met and will, in addition, result in operating economies. Petitioner further states that the modifications herein requested will result in a reduction of $1,334,216 in the $11,494,216 estimated total cost of the equivalent certificated facilities, and that such modifications will not result in any significant change in Petitioner authorized system capacity.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the petition has been received.

The Commission finds:

It is necessary and appropirate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission order issued in Docket No. CP64–154, *et al.*, on June 2, 1964, be amended as hereinafter ordered.

The Commission orders:

(A) The order of the Commission issued in Docket No. CP64–154, *et al.*, on June 2, 1964, be and the same is hereby amended by authorizing the modifications in compressor horsepower hereinbefore described, as more fully described in the aforementioned petition, as supplemented, on file with the Commission.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

COLORADO INTERSTATE GAS COMPANY, DOCKET NO. CP64-182

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND ACCEPTING TARIFF SHEETS FOR FILING

(Issued April 14, 1965)

On January 11, 1965, Colorado Interstate Gas Company (Applicant), filed in Docket No. CP64-182 an application to amend the order of the Commission issued June 2, 1964, 31 FPC 1339, in said docket, which order authorized operation of existing facilities and exchange of natural gas between Applicant and Natural Gas Pipeline Company of America (Natural) for the calendar year 1964. This exchange was to allow Applicant to deliver up to 10,000 Mcf of gas per day on an interruptible basis to Natural in return for like volumes which Natural agreed to deliver to Cabot Corporation (Cabot) for Applicant's account. The gas is used by Cabot in its carbon black plant in Carson County, Texas.

In the instant application, Applicant seeks amendment of the order issued June 2, 1964, in Docket No. CP64-182 by requesting an extension of the term of the exchange through calendar year 1965. Applicant's rate to Cabot is to be increased from 14 to 14.75 cents per Mcf. Concurrently, Applicant filed First Revised Sheets Nos. 89 and 90 to its FPC Gas Tariff, Second Revised Volume No. 2, which extend the term of the exchange agreement.

Due notice of the filing of the petition to amend and opportunity for hearing thereon has been given by publication in the Federal Register on January 26, 1965 (30 F.R. 811). No protest or petition to intervene or request for hearing has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission order issued June 2, 1964, in Docket No. CP64-182 be amended as hereinafter ordered.

The Commission orders:

(A) The certificate of public convenience and necessity issued to Colorado Interstate Gas Company in the Commission order of June 2, 1964, in Docket No. CP64-182 be and the same is hereby amended by extending the term of the exchange authorized therein through the calendar year 1965 as hereinbefore described and as more fully described in the application to amend.

(B) Applicant's First Revised Sheets Nos. 89 and 90 to its FPC Gas Tariff, Second Revised Volume No. 2 are hereby accepted for filing to become effective upon the date on which this order issues.

(C) In all other respects the order in Docket No. CP64-182 shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION, MONTANA, PROJECT NO. 2285; THE MONTANA POWER COMPANY, PROJECT NO. 2293

ORDER PERMITTING WITHDRAWAL OF APPLICATIONS

(Issued April 14, 1965)

On March 9, 1965, the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana (the Confederated Tribes) filed an application to withdraw application for preliminary permit in Project No. 2285, and The Montana Power Company (Company) filed application to withdraw its application for license for Project No. 2293.

The application by the Confederated Tribes for a preliminary permit was filed November 14, 1960, covering the Buffalo Rapids Nos. 2 and 4 sites on the Flathead River in Montana. The application of the Company filed March 8, 1961 included proposed developments at the Buffalo Rapids Nos. 2 and 4 sites and its existing upstream Kerr development which is operating under license as Project No. 5.

The Confederated Tribes and the Company filed a joint application on March 9, 1965 for a joint license under the Federal Power Act for a term of 50 years from the date of its issuance authorizing the construction, operation and maintenance of a project to be known as the "Flathead Project", designated in the Commission's files as Project No. 2507, consisting of (1) two proposed hydroelectric developments at sites known as Buffalo Rapids Nos. 2 and 4 on the Flathead River to be constructed and owned by the Confederated Tribes; and (2) the existing hydroelectric development owned, operated and maintained by the Company on the Flathead River, known as the Kerr project, now licensed as Project No. 5. The application has been accepted for filing.

The Confederated Tribes propose to sell to the Company the entire output of the proposed Buffalo Rapids developments, and the Company states that it will require this additional power to assure adequate service to its growing and expanding market. The proposed Buffalo Rapids developments, as well as the existing Kerr development, are to be located, in part, on Tribal lands of the Confederated Tribes.

The Commission orders:

Permission to withdraw the aforesaid applications for preliminary permit and for license in Project Nos. 2285 and 2293 is granted, and the proceedings with respect to those applications are hereby terminated.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

EASTERN SHORE NATURAL GAS COMPANY, DOCKET NO. CP65-223

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT

(Issued April 14, 1965)

Eastern Shore Natural Gas Company (Applicant) filed in Docket No. CP65-223 an application on January 22, 1965 and a supplement thereto on March 25, 1965 pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon service to Delaware Power & Light Company (Delaware Power)[1] at an existing delivery point northwest of Middletown, Delaware, and for a certificate of public convenience and necessity authorizing the sale of natural gas to Chesapeake Utilities Corporation (Chesapeake) at the aforementioned Delaware Power delivery point, all as more fully set forth in the application.

Delaware Power and Chesapeake have entered into a purchase and sale agreement whereby the gas distribution facilities which connect two customers of Delaware Power, namely, Globe-Union, Inc., and Shallcross Motors Inc., in New Castle County, Delaware, have been conveyed to Chesapeake, on condition the instant application is granted. The Public Service Commission of Delaware approved the transfer on November 18, 1964. As a result of the aforesaid change in ownership of the related distribution facilities Applicant proposes to cancel its G–1 service agreement with Delaware Power, and continue the sale of 100 Mcf of natural gas daily to Chesapeake under a new service agreement with delivery at the same delivery point northwest of Middletown, Delaware.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 9, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization, and upon consideration of the record,

The Commission finds:

(1) Applicant, Eastern Shore Natural Gas Company, a Delaware corporation having its principal place of business in Salisbury, Maryland, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 29, 1957, in Docket No. G–12200 (18 FPC 710).

(2) The proposed sale and delivery of natural gas to Chesapeake Utilities Corporation, as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed sale and delivery of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) The service proposed to be abandoned, as hereinbefore described and as more fully described in the application herein, is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(5) The proposed abandonment of the aforesaid service is permitted by the public convenience and necessity and approval thereof should be granted as hereinafter ordered.

(6) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(7) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

---

[1] Concurrently with the application, Applicant filed a notice of cancellation of its contract with Delaware Power effective February 21, 1965.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to the Applicant in this proceeding, authorizing the sale and delivery of natural gas to Chesapeake Utilities Corporation, as hereinbefore described and as more fully described in the application and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) Permission for and approval of the abandonment by Applicant of the service to Delaware Power & Light Company hereinbefore described, as more fully described in the application in this proceeding, is hereby granted.

(D) Applicant shall advise the Commission of the date of abandonment of the service as authorized in paragraph (A) above within ten days of such abandonment.

(E) The notice of proposed cancellation filed January 22, 1965, cancelling Applicant's contract filed under its Rate Schedule G–1 for service to Delaware Power is accepted for filing effective on the date of issuance of this order.

(F) Applicant shall file pursuant to Part 154 of the Commission's Regulations an acceptable service agreement reflecting the terms and conditions of the sale and service proposed to be rendered Chesapeake under Applicant's Rate Schedule CD–1.

OPINION NO. 458

INDIANA & MICHIGAN ELECTRIC COMPANY, DOCKET NO. E–7089

OPINION AND ORDER DETERMINING JURISDICTION

(Issued April 14, 1965)*

Syllabus

1. Where public utility participates in and is dependent upon integrated interstate power pool, all its wholesale sales for resale are subject to Commission jurisdiction. P. 740.
2. Where electric energy is transmitted daily to or from power company across state borders, Commission need not know precise nature of flow in determining jurisdiction—Power Act applies to transmission and sale of "electric energy" which represents an attribute of electric current and its practical effect. PP. 744–745.
3. Sales for resale from constantly changing mass of electric energy extending over borders of many states and infusing facilities of power company and other system companies are sales in interstate commerce subject to Commission jurisdiction under the Federal Power Act. P. 746.
4. Interposition of transformers between out-of-state sources of power and delivery points to customers and resulting transformation process does not block transmission of energy—the significant fact within meaning of Section 201 of the statute. P. 746.

---

*Initial decision appears on P. 752. Opinion No. 458–A issued June 11, 1965, denies rehearing, 33 FPC 1252. Affirmed, *Indiana & Michigan Electric Co.* v. *F.P.C.*, 365 F. 2d 180 (CA7–1966), cert. denied, 385 U.S. 972 (1966).

5. That all wholesale utility companies in Indiana could have met all state loads and power company could have supplied all its Indiana customers, including wholesale, is not relevant because system is not operated that way. P. 747.
6. There is nothing in Federal Power Act that makes Commission jurisdiction over sales dependent on whether facilities used are local distribution facilities. P. 747.
7. All wholesale sales for resale in interstate commerce made by a public utility are subject to provisions of Sections 205 and 206 of the Act regardless of whether particular sale involved jurisdictional facilities. P. 748.
8. Power Company was not denied due process by denial of pre-hearing discovery where it has shown no need therefor and evidence sought has no relevancy to the issues. P. 749.
9. Request for subpoenas properly refused where company did not seek to secure evidence of relevant facts but rather to examine motives of Commission and memoranda and ideas of its staff. P. 750.
10. In a proceeding under Section 201 of the Federal Power Act, Commission *determines* jurisdiction over power company's wholesale sales for resale.

Richard M. Dicke, Richard Hawkins, Rolon W. Reed, Anthony L. Fletcher, Fred L. Forni and *John A. Guzzetta*, for Indiana & Michigan Electric Company.

William R. Connole and *Howard S. Spering* for the State of Michigan.

Ernst Liebman, Drexel D. Journey and *Herbert R. Scott* for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

BLACK, *Commissioner:*

This is a proceeding under Section 201 of the Federal Power Act, to determine whether wholesale sales made by Indiana & Michigan Electric Company (IM) to 24 municipalities and cooperatives in the States of Indiana and Michigan are subject to the jurisdiction of the Commission. Indiana-Michigan's status as a public utility within the contemplation of the Federal Power Act has been determined previously;[1] further, it concedes the interstate nature of many of its wholesale for resale transactions. The proceedings are now before us upon exceptions filed by IM to the examiner's decision, the staff's brief opposing exceptions and a reply brief by IM permitted to be filed upon its motion by special order of the Commission. For the reasons hereinafter developed, we conclude, as did the examiner, that, where a public utility participates in and is dependent upon an integrated interstate power pool, all of its wholesale sales for resale are subject to the jurisdiction of this Commission.

IM is a part of the integrated, interstate American Electric Power System (AEP). This system consists of one holding company, American Electric Power Company, Inc.; one service corporation, American Electric Power Service Corporation, and the following operating subsidiaries in addition to IM: Appalachian Power Company, Kentucky Power Company, Kingsport Utilities, Inc., Ohio Power Company, and Wheeling Electric Company. The facilities of the operating companies extend from Michigan and Indiana through Ohio, Kentucky and West Virginia into Virginia and Tennessee and make interconnections with other systems in some of these states and surrounding states. (See attached map) Of IM's wholesale customers involved here, 14 of the municipals and 7 of the cooperatives are in Indiana; two of the municipals and one cooperative are in Michigan.

---

[1] *Indiana & Michigan Electric Co. v. Public Service Company of Indiana, Inc.*, 10 FPC 1315, 1316.

The Commission first asked IM to file rate schedules for the sale of electric energy to the municipals and cooperatives by letter of January 2, 1963, and, obtaining no response, issued a show-cause order on April 16, 1963 (29 FPC 746). By order issued July 23, 1963 (30 FPC 391), the Commission denied application by IM for subpoenas *ad testificandum* for taking the testimony by deposition of Chairman Swidler, and Messrs. Joseph H. Gutride, Secretary, and Harold E. Miller, staff member, and for a subpoena *duces tecum* seeking data underlying the show-cause order. On the same day, the Commission ordered its secretary to issue a subpoena *duces tecum* directed to the AEP companies requiring that they supply certain specified documents relating to system operation (30 FPC 392). IM filed a complaint in the United States District Court in Indiana asking the issuance of the subpoenas. The court dismissed this on the ground the plaintiff had its remedy by seeking review in the Court of Appeals of the Commission's final action.[2]

After denial of the request of the Indiana Public Service Commission for a concurrent hearing, the first hearing session in this proceeding was held July 29, 1963. At this and several subsequent sessions, as will be set forth below, further requests for subpoenas were made and other procedural matters were discussed. After the filing of direct cases by IM and staff, cross-examination of the witnesses did not begin until March of 1964, and the hearing was not completed until June 11, 1964. Briefs were then exchanged; and the examiner's decision was issued December 7, 1964. On January 11, 1965, 33 FPC 38, the Commission denied IM's request to defer further action pending Congressional consideration of proposed legislation. Exceptions were filed to the examiner's decision by IM on January 28, 1965, an answer by the staff on February 12, 1965, and reply by IM on February 19, 1965, accepted in accordance with the Commission's order of March 10, 1965. On February 18, 1965, the Indiana Municipal Electric Association, whose members include 14 municipal customers of IM, filed a statement of position asking that the examiner's decision be upheld.

JURISDICTION OVER WHOLESALES

Based on the operations of the integrated AEP system, the examiner concluded that IM's sales to its wholesale customers were sales in interstate commerce and subject to Commission jurisdiction even though, he found that there were "no means presently known to science for identifying the particular sources of energy delivered by the AEP system to any particular point of sale." Rather than relying on staff's extensive technical evidence, he relied particularly on the Commission's *Pennsylvania Water and Power Company* case, 8 FPC 1[3] and found that the AEP system was a closely integrated network and that all of its electric energy resources are available to meet the combined loads of its members without reference to state boundaries. The staff took essentially the same position but also presented full evidence on the operation of the AEP system.

IM admits that it is a member of an integrated and coordinated system. It says, however, that it negotiated the contract for each sale in issue and that the dispatching of generation to serve these loads is done by it and not by the AEP system. IM also argues at length that the sole support for jurisdiction here is that the sales involved are pool sales, that under the Power Act and *Connecticut*

---

[2] *Indiana & Michigan Electric Co.* v. *F.P.C.*, 224 F. Supp. 166 (USDC N.D. Indiana).

[3] Affirmed 193 F. 2d 230 (CADC), affirmed 343 U.S. 414 (1952).

Light & Power Co. v. *F.P.C.*, 324 U.S. 515, 529, it is necessary to prove "technological" transmission of out-of-state energy, and that *F.P.C.* v. *Southern California Edison Co.* (Colton) 376 U.S. 205, also emphasized an engineering and scientific rather than a legalistic or governmental test for jurisdiction. In the earlier Commission cases cited by the staff, including *Penn Water*, IM points out the staff introduced evidence that proved as a matter of fact that out-of-state energy was involved in the sales in question. It says this has not been shown here, and, thus, there is no basis for the conclusion that the sales are in interstate commerce.

IM is a "public utility" subject to Part II of the Federal Power Act as found by the examiner and by the Commission (10 FPC 1315) because within the meaning of Sections 201 (b) and (e) it owns and operates facilities subject to the jurisdiction of the Commission. These include its own high voltage lines extending across the Indiana-Michigan state line and other lines used for transmitting and selling large amounts of energy into and out of Indiana. There is no controversy about this. The issue is confined to whether its wholesales are sales of "electric energy at wholesale in interstate commerce," within the meaning of Sections 201(b) and 205 and 206. The issue, then, is whether the sales to cooperatives and municipalities for resale are in interstate commerce and so subject to our jurisdiction.

In making our determination of jurisdiction over IM's wholesales, we shall, of course, employ an engineering and scientific test as is suggested by the *Connecticut* and *Colton cases*. In every previous case sales for resale from integrated, interstate pools have been found jurisdictional and in each case this finding has been supported by evidence purporting to trace out-of-state energy to each of the sales involved or facts from which such a conclusion could be reasonably inferred. In the *Penn Water* case, 343 U.S. 414, 420, there was involved an interstate power pool involving two hydroelectric projects on the Susquehanna River in Pennsylvania owned and operated by the Safe Harbor Water Power Corporation and the Penn Water Company and the steam generating plants of Consolidated Gas Electric Light and Power Company of Baltimore. A question arose as to jurisdiction over sales made by Penn Water to its utility customers in Pennsylvania. The Supreme Court recited that these sales included about 83 percent of Pennsylvania generated power but quoting from a portion of the Commission's Opinion (8 FPC 1, 12, 15), which discussed the nature of the pool and not the supporting tracing, approved the finding of jurisdiction on the following basis (343 U.S. at p. 420):

> The central fact disclosed by the record about Penn Water's sales in Pennsylvania is that they are not sales of the output of Penn Water's own plant, but sales of output of the integrated and coordinated interstate electric system of which Penn Water's facilities are an integral part * * *.
>
> In this manner energy crossing the State boundary, with other system energy, is used to fulfill system requirements. There result times when system energy generated in Pennsylvania is used, mixed or unmixed, in meeting system requirements in Maryland. Similarly, there are occasions when system energy from Maryland is used, mixed or unmixed, in meeting system requirements in Pennsylvania. Energy flows in, across, and out of the system transmission network as the needs of the interconnected members develop from minute to minute and day to day.
>
> It is accordingly evident that the operations of the unified system enterprise are completely interstate in character, notwithstanding the fact that system energy transactions at some particular times may involve energy never crossing the State boundary. 8 FPC 1, 12, 15.

The Supreme Court then added:

> We hold that the Federal Power Commission has complete authority to regulate all of this commingled power flow. [Citing *Safe Harbor Water Power Corp.* v. *Federal Power Commission*, 179 F. 2d 179, affirming 5 FPC 221.] The Commission's power does not vary with the rise and fall of the Susquehanna River.

Other cases cited by the staff and examiner involve similar reasoning. In *Otter Tail Power Co.*, 8 FPC 392, 397, we found jurisdiction noting that "The generation from plants in each of the three States contributes to the requirements of the system in all three of those States. No attempt or effort is made at any time to limit generation to any plant because of State Boundaries." In *Wisconsin Michigan Power Co.*, 10 FPC 170, 176[4] the Commission, in determining jurisdiction over sales for resale, again noted that the "generation from plants in each of the states contributes to the requirements of the system in all of the states."

Turning to the present record we find that AEP forms a physically integrated and centrally controlled interstate system for the generation, transmission and sale of electric energy. This conception is well defined by Philip Sporn in his book "The Integrated Power System". Mr. Sporn has been associated with the development of the AEP system, and is a Director of American Electric Power Company, Inc. and Chairman of its System Development Committee.

> From a technical standpoint, what is meant by 'integration' is this: that all facilities of the system are connected physically into or gathered within the system, and that they all are made to work continuously as part of the system. The presumption is that no facility is needlessly idle; no part of the system is left hanging loose, so to speak; no part of the system is left without the resources and support of the system as a whole.
>
> Applied to energy generation, this means the ability to develop all energy resources capable of economic exploitation and the development of all the resources to their maximum, as well as the elimination of all barriers to development such as local inability to absorb the resources. Again, it means the ability to use the largest units justified by the requirements of the system for any particular station or source, regardless of the requirements of the local area. Still further, it means the ability, as the system grows and develops, to exploit the most efficient units capable of technical projection because other units relatively recently installed but perhaps not so technically advanced can be relegated to a lesser system use. The combined or integrated effect of these is conservation on a vast scale.

Mr. Sporn then discusses the AEP system as an example of an integrated system and considers its growth and development, its ability to serve all requirements of any part of the area and its contribution to operating economies and resource conservation.

It is our opinion that the record in this proceeding supports Mr. Sporn's definition and shows that the AEP system is truly an integrated operation. The management of the holding company located in New York controls the development and operation of the system. For instance, the management appoints all of the directors of the operating subsidiaries; nearly all the directors of the subsidiaries are also directors of the holding company or the service corporation; and the same persons hold the positions of president, vice-president, and treasurer in the holding company, the service corporation, and in each of the six operating subsidiaries. The service corporation provides management, engineering, and supervisory services for the system; it plans and supervises the construction of facilities throughout the system; through its dispatching office in Columbus, Ohio, it arranges economical loading of the generating facilities; it plans necessary outages; and it arranges interconnection agreements between the subsidiaries and with other systems. We, of course, do not consider these intercorporate relationships significant except as they indicate the extent of integrated operations of these companies.

---

[4] Affirmed as *Wisconsin Michigan Power Co.* v. *F.P.C.*, 197 F. 2d 472 (CA7), certiorari denied 345 U.S. 934.

Physically, the AEP system includes a network of 14,000 circuit miles of transmission lines which extends from Lake Michigan to North Carolina and connects the generating facilities with the loads and interconnects the subsidiaries of AEP with each other and with 19 other systems at 66 locations. The AEP system was developed and operated as a coordinated unit to provide full service, to provide economy in capital outlay and to achieve economy in operations by using the lowest cost sources of power based on the needs of the entire system, and these objectives have been carried forward to present day operations. In effect, all of the electric energy generated by the generating units is delivered to the seven state AEP transmission system from which all of the customers in the pool are supplied.

The AEP system is normally operated as a single integrated unit so that the generation within the entire interconnected system is economically loaded on a minute to minute basis for the most economical operation of the system. The record shows that the scheduling of generation on the AEP system and power and energy transactions between AEP and other systems is done at the central dispatching office at Columbus, Ohio (now moved to Canton, Ohio). The dispatching office schedules the output of each generating unit on a lowest cost basis to supply each increment of load. Thus, while IM's generating units may have sufficient capacity to supply its load when all are in operation, for particular hours the load dispatcher may find that it is less costly to move energy into Indiana by loading generating units of other members of the AEP system. Conversely, whenever to do so is in the interest of overall system economy, generating units on the IM system will carry the load for other system members.

These transactions between members of the pool are recorded on forms kept by the AEP system, many examples of which have been presented in evidence in this proceeding. For instance, an AEP system form (1A9) shows the hour by hour classification of electric energy supplied to or taken from the AEP pool and also of transactions with nonaffiliated electric systems. The basic data from this form are used by AEP to determine the amount of benefits to be allocated among the companies. The forms show what generating units were loaded to displace the higher cost of energy of other generating units, for in billing it is necessary to take into consideration the incremental loading of the generators in the system. They show that frequently out-of-state generation of other members of the AEP system was used to meet IM's load.

IM's share in the benefits of pool transactions is shown in the AEP monthly "Interchange Power Statements" which set forth interstate energy either received or delivered by IM. Credits and charges are allocated among IM, Ohio Power Company and Appalachian Power Company on the basis of a "Member Load Ratio" representing the proportion that the individual company load bears to the system load. Through these methods IM obtains the benefits of the operating economies of the entire system, and its costs of power are not only its own but are partly the costs of other companies in other states. The statements indicate that every day of the year electric energy is transmitted to or from IM across the Indiana-Ohio and Indiana-Illinois borders, and IM also transmits energy daily across the Michigan-Indiana border.

To determine jurisdiction in such circumstances, we need not know the precise nature of the flow of electric current. It may be true that electric current involves the movement of particles known as electrons in the conductors, but that is not significant here. The Power Act applies to the transmission and sale of "electric energy", which represents an attribute of electric current, and its practical effect. We know further that, whatever its physical nature, this electric energy moves from generation to load with the speed of light. Practically it cannot be stored as such, but must be generated as needed. In accordance with the practice of all modern systems in the United States, the generation occurs in the form of 60 cycle alternating current. Its voltage is increased by transformers; it is transmitted in accordance with the system's electrical characteristics, which change from minute to minute; its voltage is reduced by other transformers in various substations; and it is delivered to the system customers. In determining whether sales of electric energy generated by the system are in interstate commerce, we must consider the physical characteristics of integrated system operation as well as the administrative and contractual aspects.

In practice all of the generators on a closely knit system like AEP are interlocked electromagnetically, and the frequency of all generators must be the same. They must all be synchronized with one another and change speed at the same time. Otherwise, the circuit breakers would open, and the system could no longer operate. Apart from these serious consequences of frequency deviation, contracts between IM and other systems require sixty cycle current. Furthermore, the smaller the deviation in frequency the less will be the inadvertent transfer of energy between systems; the more nearly perfect will be the time kept by clocks; and the more reliable will be the service to many precision electrical instruments and industrial operations. When a time error develops, the frequency of the system is increased or decreased until the time error becomes zero.

Frequency, in fact, is the means by which the integrated system of the AEP type is automatically controlled. Thus deviations in frequency, caused by changes in load, activate the tie line control equipment, which, in turn, controls the governors on the turbines throughout the system so that generation is continually matched with net system load, and frequency is maintained at sixty cycles per second. The very fact that IM is a member of a system requires that it meet the requirements of its load without the large variations in frequency which would result if its generators alone took care of major load changes of its customers.

A modern electric system, such as AEP, involves a continuous variation in electric load throughout the network and a continuous effort by generating units, controlled by the central dispatching office and by the automatic equipment to bring total power generation in balance with total electric load plus losses and at the same time maintain voltage and frequency control within narrow limits. When a new load develops at any given point it may not be possible to determine the precise energy flows involved but it is clear that the power resources of the whole interstate system and of interconnected systems are used to meet this load and all other loads. In fact, all loads must, in effect, be supplied from total generation, for it is not possible to supply one load without supplying all the other loads.

Thus, we are not dealing merely with a single flow of energy or multiple flows of energy, but an interstate pool of energy to which the generators of the system, or other interconnected systems contribute power, and from which all loads, and sometimes the loads of other systems, are supplied. The network of generators and high voltage transmission lines extending over seven states is only the visible evidence of the pool in which currents changing from minute to minute can be measured but where often there is no way to determine, or need to determine, the way the needs of each power customer will be supplied. The manner in which this pool is operated is such that exact tracing of energy flow would require the installation of expensive meters and the expenditure of an excessive amount of time. Even if it could be done practically, a slight change in line design or operating technique would lead to a claim that jurisdiction needed to be demonstrated all over again. Thus in a very real sense tracing does not necessarily reflect the physical realities of the movement of electric energy, but is rather based on an analogy to the flow of liquids. Of course, there may still be some power systems in which the flows are simple enough to be susceptible of the tracing analogy. The showing of the inherently interstate pool operations made in this record better describes physical and engineering realities than the somewhat artificial assumptions used in tracing.

Moreover, while it is not practicable to trace the energy flows precisely from specific generating plants to specific loads, the company records show conclusively that energy generated outside Indiana and Michigan pervades IM's facilities and is delivered to those portions of IM's system serving the municipals and cooperatives, and we so find. Thus, IM receives electric energy from Ohio Power Company, The Cincinnati Gas & Electric Company, Commonwealth Edison Company, Ohio Valley Electric Corporation, and probably Illinois Power Company, all of whose generation is located outside of Indiana or Michigan, and transmits this energy on its high voltage transmission network. For instance, the energy from Commonwealth Edison is received at IM's Olive substation in northern Indiana, and, when the IM generating units at the Twin Branch station are not operating, commingled energy through Olive supplies practically all of the electric needs of the north central Indiana and Michigan area. From this type of evidence the staff witness demonstrated that at some times all of the municipal and cooperative electric systems involved in this proceeding receive electric energy which is transferred into Indiana across the Indiana state line from outside the State of Indiana. It may also be noted that IM transmits large amounts of energy from Indiana into Michigan where the amount of energy delivered to each of the wholesale customers exceeds IM's total generation in Michigan. To conclude, sales for resale from the constantly changing mass of electric energy extending over the borders of many states and infusing the facilities of IM and the other AEP companies are sales in interstate commerce and subject to our jurisdiction under the Federal Power Act.

There are several additional issues raised by IM which bear on the question of jurisdiction over its sales for resale. IM argues that, as its system is constructed, there are transformers interposed between the out-of-state sources of power and the delivery points to the customers so that the sources of power are really the transformers. Although, in many cases the electric current in the primary winding of a transformer induces a new current in the secondary winding the transformation process does not block the transmission of energy and that is what is significant within the meaning of Section 201 of the statute. Furthermore, IM's argument proves too much, because if it were well-founded there could be no interstate sales of electricity, at least where transformation was interposed between the buyer and seller. The argument has been previously rejected by the courts. *Wisconsin Michigan Power Co.* v. *F.P.C.*, 197 F. 2d 472 (CA7), certiorari denied 345 U.S. 934; *Hartford Electric Light Co.* v. *F.P.C.*, 131 F. 2d 953, 960 (CA2), certiorari denied 319 U.S. 471.

IM argues that for each hour studied during a period of more than two years the total Indiana net generation of the interconnected utilities in the state exceeded the Indiana load of these utilities, that IM's Indiana generation exceeded the load of its Indiana wholesale customers, and that its electric facilities in Indiana are physically capable of serving the total demands of all its Indiana customers. (This is, of course, not true for IM's generators in Michigan.) In like vein IM cites *Peoples Natural Gas Co.* v. *P.S.C.*, 270 U.S. 550 (1926), where it was held that gas deliveries to a city from a pipeline carrying mixed in-state and out-of-state gas was in intrastate commerce since the volume of in-state gas was large enough to supply the city. IM also notes that the Power Act, as explained in *Connecticut Light & Power Co.* v. *F.P.C.*, 324 U.S. 515, 525, was "to extend only to those matters which are not subject to regulation by the States" (Section 201(a)), and points out that the Indiana and Michigan Commissions have been regulating these sales for many years. The Indiana Commission, while not filing a brief, instituted an investigation, held a hearing, and found that the energy delivered by IM to its Indiana municipal and cooperative customers was energy generated, transmitted, and consumed solely within Indiana.

None of these arguments are persuasive. That all of the wholesale utility companies in Indiana could have met all loads in Indiana and that IM could have supplied all of its Indiana customers, including the wholesale customers, is not relevant because that is not the way the system is operated. IM is a member of an interstate pool and meets the needs of its customers with the assistance of energy received from out-of-state sources in order to obtain power at lower costs than could have been produced within the state. IM's argument that its Indiana generation was in fact at all times greater than its wholesale loads to the cooperatives and municipalities is not meaningful. What IM is, in effect, arguing is that the generators within Indiana are supplying the resale customers while the out-of-state energy is being used to supply the nonjurisdictional retail sales. The record does not support such a segregation of supplies and markets; in fact it would be contrary to the engineering design of Indiana-Michigan's system. IM's reliance on the *Peoples* case is unfounded. That case, which predated the Power Act, does not involve sales from the kind of integrated wholesale system involved here. The gas was flowing into the state and the question was only that of separating in-state from out-of-state gas, neither of which left the State after the mixture occurred. Here, because of the nature of electricity, and the physical inability to control the direction of its transmission, no such simple separation can occur. *Cf. California* v. *Lo-Vaca Gathering Co.*, 379 U.S. 366. Furthermore, if a sale is at wholesale in interstate commerce, the State does not have jurisdiction under *P.U.C.* v. *Attleboro Steam & Electric Co.*, 273 U.S. 83, whose holding was embodied in the Power Act. The purported exercise of State regulation is not relevant. *United States* v. *P.U.C.*, 345 U.S. 295, 303–304. Congress meant to draw a "bright line" leaving this Commission with jurisdiction over all wholesale sales in interstate commerce except where expressly exempted by the Federal Power Act. *F.P.C.* v. *Southern California Edison Co. (Colton)*, 376 U.S. 205, 215.

IM argues that even if the sales are in interstate commerce they are not subject to Commission jurisdiction because they are made from facilities used in local distribution or at least the Commission has not demonstrated to the contrary. However, as the examiner points out, there is nothing in the Power Act that makes Commission jurisdiction over sales dependent on whether the facilities used are local distribution facilities. The exemption in Section 201(b) for facilities used in local distribution relates solely to the question of the facilities over which the Commission has jurisdiction—a matter which in turn is relevant to the determination of the public utility status of an electric power company pursuant to the standards of Section 201(e). However, if a company owns or operates *any* jurisdictional facilities it is a public utility despite the fact that it might also own or operate facilities exempted by Section 201(b), and *all* wholesale sales for resale in interstate commerce made by a public utility are subject to the provisions of Sections 205 and 206 of the Act regardless of whether the particular sale involved jurisdictional facilities. See *Interstate Light and Power Co.*, 10 FPC 225, 230, affirmed *sub nom. Wisconsin* v. *F.P.C.*, 201 F. 2d 183 (CADC), certiorari denied 345 U.S. 934; *Wisconsin Michigan Power Co.*, 10 FPC 170, 176–177, affirmed 197 F. 2d 472 (CADC), certiorari denied 345 U.S. 934. The *Connecticut* case cited by IM is not in point: the issue there was public utility status and the court held only that the Commission had failed to find that certain facilities which it had concluded supported public utility status of the company were "not used in local distribution." It did not suggest that a company which admittedly was a public utility could exempt its wholesale sales in interstate commerce from the Commission's jurisdiction under Sections 205 and 206 because those sales were made over local distribution facilities.

Even on its own terms IM's local distribution argument is essentially that the lower voltage lines over which it ultimately delivers power to the facilities owned and operated by at least some of its municipal and cooperative customers are also used for direct retail sales to certain of IM's industrial, commercial or residential customers; therefore these lines are local distribution facilities. There are at least two answers to this contention. First it cannot be suggested that the only IM facilities involved in the sales to their municipal and cooperative wholesale customers are the ultimate lines leading directly to the connection with the facilities of the customers; obviously many other clearly jurisdictional facilities are also involved in the sale. See *Hartford Electric Light Co.* v. *F.P.C.*, 131 F. 2d 955 (CA2), certiorari denied 319 U.S. 471. Second, as the Supreme Court expressly noted in the *Colton* case, *supra* at p. 210, note 6, the fact that a company may make a few direct sales off a line transmitting power to a wholesale customer does not convert the line into local distribution facilities. As the Court of Appeals stated in *Wisconsin Michigan Power Co.* v. *F.P.C.*, 197 F. 2d 472, 477, certiorari denied 345 U.S. 934: "at no point before delivery (to a wholesaler) has been completed, has interstate transmission terminated" and "there is no ground for the position that local distribution includes any transmission occurring before the wholesaler who sells at retail is reached."

DUE PROCESS

IM argues that it has been deprived of due process by failure of the Commission and examiner to grant it pre-hearing discovery and by the examiner's cutting off cross-examination. As already noted, IM sought a subpoena directed to the Chairman, Secretary and a staff member and also applied for a subpoena requesting the production of the materials underlying the show-cause order. These requests were denied by the Commission by its order of July 23, 1963 (30 FPC 391), on the ground that Commission members may not be examined and that the Commission's files were available. The Commission did indicate that at the hearing the parties might request specified material, and this would be considered by the examiner.

At the first day of the hearing, July 29, 1963, IM made a similar request for subpoena, and further requests on October 8, 1963 and December 28, 1963. In the December 28, 1963 application, IM made an all-inclusive request for, among other things, the bases, criteria, expert opinions, and analyses relating to the jurisdiction questions in this proceeding, and the writings of the principal staff witness concerning his theories in this proceeding and 17 other proceedings. All these requests were denied by the examiner. The Commission rejected an appeal from one of them (30 FPC 1286) on the ground that there was no need for an interlocutory appeal.

IM also requested a subpoena for materials supporting the Commission's published list of public utilities,[5] and this was denied by the examiner. Counsel for IM was not permitted to cross-examine the staff witness who prepared the lists as to what data was used, on his testimony at a 1947 Congressional hearing on a bill[6] to amend the Power Act where he indicated that certain companies were classified intrastate although connected to interstate networks, and on whether other members of the staff agreed with his theories.

In our opinion the examiner was entirely proper in his rulings. IM has shown no need for pre-hearing discovery, nor does the evidence sought to be adduced by such means or through proposed cross-examination have any relevancy to the issues here involved. The facts in this case deal exclusively with the operations of the IM and the AEP system, facts which were of course in the exclusive possession of the company. It is the facts dealing with the company's own system and not the mental processes of the Commission, or the theories of other members of the Commission staff, which lead to a determination whether the sales for resale here are sales in interstate commerce. Furthermore, once the facts are known the question as to what kind of utility activity represents a sale in interstate commerce is a legal question. It involves the interpretation of Section 201(b) of the Federal Power Act with the assistance of previous cases, not facts allegedly hidden in the Commission's files. Moreover, evidence in the Commission's files that the staff had changed its theory or had adopted a new theory would in no way affect the result in this proceeding, where we are basing our determination on the present record in the light of our opinions as to the meaning of the Federal Power Act. We may note further that the formulation of the lists of public utilities are not relevant; there is no contention here that IM is not a public utility. Likewise, cross-examination of the witness on the 1947 Congressional committee hearings deals with the irrelevant question of public utility status and is very remote in time.

In any case the hearing provided IM with full opportunity to test the staff's theories and the evidence on which they were based. The staff had the burden of going forward with its evidence and this afforded IM opportunity for cross-examination and ample time thereafter to rebut staff's case. While the show-cause order was issued on April 16, 1963, the hearing sessions on July 29, 1963, September 4, 1963, October 2, 8, 14, and 18, 1963, were concerned with preliminary matters such as the preparation of evidence and the matter of the subpoenas. The staff originally filed its direct case on November 4, 1963, but after postponement by Commission order, IM did not file its direct case until December 9, 1963, when it moved to strike the staff's direct case. The examiner required that the staff revise its presentation, and the staff's case was eventually submitted in revised form on February 4, 1964. Cross-examination did not begin until March 18, 1964. Counsel for IM asked one staff witness only about his qualifications, but cross-examined the principal staff witness on thirteen days, ending April 16, 1964. Cross-examination of IM's witnesses began on April 20, 1964. On April 21, 1964, the hearing was recessed to permit preparation and service of the rebuttal evidence which was accordingly completed on May 21, 1964. The hearing reconvened on June 1, 1964, for the receipt of the rebuttal evidence but was again recessed for the preparation of cross-examination which commenced on June 9 with the principal staff witness. The hearing was finally completed on June 11, 1964.

---

[5] A document dated January 1963 and entitled "List of Electric Power Suppliers With Annual Operating Revenues of $2,500,000 or More Classified as Public Utilities Under the Federal Power Act."

[6] Hearings on H.R. 2972, 80th Cong., 1st Sess., p. 654.

IM makes the additional argument that under Section 12 of the Administrative Procedure Act it is entitled to the same "privileges relating to procedure" as the government agencies and that it was therefore improper to grant the staff's subpoenas at the same time IM's requests therefor were being denied. This contention ignores the nature of the proceeding. The Commission was acting to secure access to information in the possession of a regulated utility essential to meet its burden of showing that the utilities' sales were jurisdictional. The subpoenas sought and secured were an admittedly appropriate manner of securing such information (See Federal Power Act Section 307). Subpoenas were also available to IM if it could show the need for their issuance. As we have indicated, however, IM did not seek subpoenas herein to secure evidence of any facts relevant to the issues in the case but rather to examine into the motives of the Commission and the memoranda and ideas of its staff. These requests were properly refused as both unnecessary and inappropriate.

This is not a case where it can be suggested that only the Commission's staff possessed the knowledge or expertise necessary to permit IM to prepare its case. On the contrary, IM and its associated companies are among the leaders in utility development in this country and have at their disposal world renowned experts to testify on all aspects of system operation. IM's total failure to show the invalidity of the staff's case does not indicate that it was unfairly handicapped in presenting a contrary case but rather that the staff case was sound. It is clear that the facts of IM's operations are not and never have been seriously in issue and that its wholesale sales are in interstate commerce.

The Commission further finds:

(1) IM is a corporation organized and existing under the laws of the State of Indiana. It is also qualified under the laws of the State of Michigan to transact business as a foreign corporation in that State. It owns and operates facilities, among others, for the transmission and sale at wholesale of electric energy which is transmitted between the States of Indiana, Michigan, Illinois, Ohio and Kentucky and consumed outside the State in which it is generated, all of which facilities are in addition to and do not include facilities used for the generation of electric energy, facilities used in local distribution or only for the transmission of electric energy consumed wholly by the transmitter. IM is, therefore, a public utility within the meaning of that term as used in the Federal Power Act, as heretofore found by the Commission, 10 FPC 1315 at 1316, 9 FPC 617 at 618, 4 FPC 783 at 785.

(2) IM is a member of the power pool composed of several companies further organized into the AEP system and such pool is an integrated and coordinated interstate electric system, and the sales of system energy, such as those by IM to the 24 municipals and cooperatives referred to in (3) below, are pool sales, and hence, in the light of the interstate nature of the pool are sales in interstate commerce.

(3) IM sells electric energy to Niles and Sturgis, Michigan, and to the Fruit Belt Electric Cooperative in Michigan. It also sells electric energy to fourteen Indiana municipals, namely, Albion, Anderson, Auburn, Avilla, Bluffton, Columbia City, Fort Wayne, Frankton, Garrett, Gas City, Mishawaka, New Carlisle, Richmond and Warren, and to seven Indiana cooperatives, namely, Allen-Wells County REMC, Huntington County REMC, Jay County REMC, Noble County REMC, Paulding-Putnam Electric Cooperative, Inc., Wayne County REMC, and Whitley County REMC.

(4) Each of the twenty-four sales, referred to in (3) above, is a sale at

wholesale for resale in interstate commerce within the meaning of Sections 201, 205 and 206 of the Federal Power Act.

(5) The facilities of IM by which it delivers electric energy to its municipal and cooperative customers are used for the transmission and sale at wholesale of electric energy in interstate commerce and are not facilities used in local distribution within the meaning of Section 201(b) of the Federal Power Act.

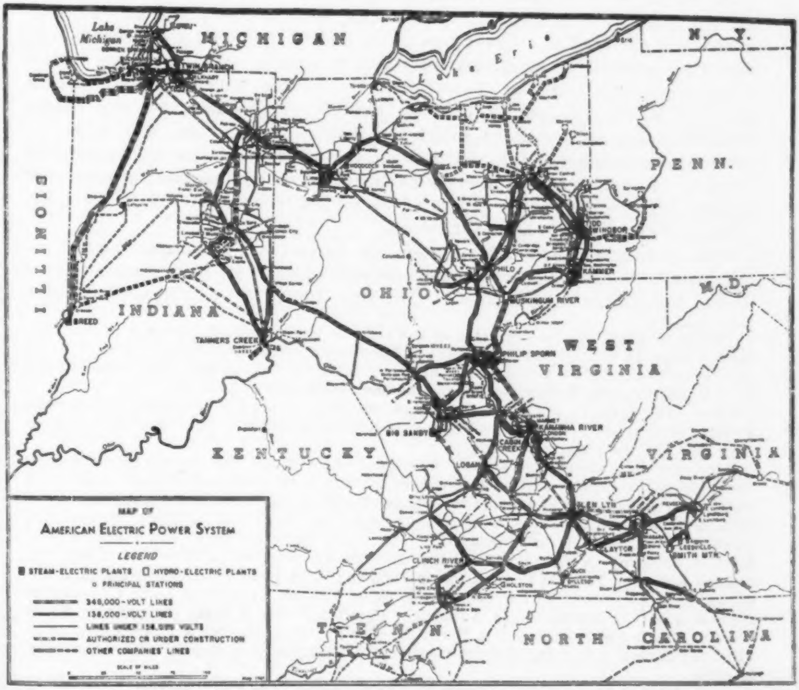
(6) IM has not filed rate schedules for service to the municipal and cooperative customers referred to in (3) above. It therefore has been violating and continues to violate the provisions of Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations thereunder.

The Commission orders:

(A) Within 60 days of the date of this order IM shall file in accordance with Part 35 of the Commission's Regulations and Section 205 of the Federal Power Act, its contracts in effect as of April 16, 1963, with each of the twenty-four municipal and cooperative customers, referred to in (3) above, as its rate schedules for its sales at wholesale of electric energy to those twenty-four customers. Such rate schedules shall remain effective until and unless superseded by a change filed pursuant to Section 205(d) of the Act and Section 35.3 of the Regulations thereunder, or changed pursuant to order of this Commission.

(B) The decision of the presiding examiner, to the extent not inconsistent herewith, is approved as the decision of the Commission.

(C) Exceptions not granted herein are hereby denied.


MAP OF
AMERICAN ELECTRIC POWER SYSTEM
LEGEND
■ STEAM-ELECTRIC PLANTS
☐ HYDRO-ELECTRIC PLANTS
○ PRINCIPAL STATIONS
345,000-VOLT LINES
138,000-VOLT LINES
LINES UNDER 138,000 VOLTS
AUTHORIZED OR UNDER CONSTRUCTION
OTHER COMPANIES' LINES
SCALE OF MILES
Lake Michigan
MICHIGAN
Lake Erie
N. Y.
PENN.
ILLINOIS
INDIANA
OHIO
MD.
WEST VIRGINIA
KENTUCKY
VIRGINIA
TENN.
NORTH CAROLINA
TWIN BRANCH
BREED
TANNERS CREEK
WINDSOR
PHILO
KAMMER
MUSKINGUM RIVER
PHILIP SPORN
KANAWHA RIVER
BIG SANDY
CABIN CREEK
LOGAN
GLEN LYN
CLAYTOR
LEESVILLE
SMITH MTN
CLINCH RIVER
HOLSTON

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON AN ORDER TO SHOW CAUSE

(Issued December 16, 1964)

HALL, *Presiding Examiner:* Indiana & Michigan Electric Company (Indiana & Michigan) sells electric energy at wholesale for resale to twenty-four[1] distributing municipal and rural electric cooperative customers located in the States of Indiana and Michigan. The question for decision in this show cause proceeding is whether these wholesale sales are, in the circumstances of this case. in interstate commerce and therefore subject to the filing requirements of Part II of the Federal Power Act (Act).

Indiana & Michigan is one of six affiliated operating electric utilities comprising the seven-state American Electric Power System (AEP System).[2] It provides retail and wholesale service in northern and eastern Indiana and southeastern Michigan. The other five states served by the AEP System are Ohio, West Virginia, Virginia, Kentucky and Tennessee.

The "operations and facilities" of the six operating companies making up the seven-state AEP System have "been integrated into a single power network". Each power plant on the system "supports, and in turn is supported by, the others. Furthermore, the AEP System is interconnected with 19 other electric power systems at 66 locations, including 39 major high-voltage interconnections."[3]

An extensive integrating transmission network is the means by which the electric generating facilities of the six AEP affiliates are interconnected, integrated and operated as a power pool to adequately supply all system loads with maximum over-all economy, efficiency and reliability. Of importance in this connection is the fact that electric energy cannot feasibly be stored. All demands must be satisfied by capacity capable of producing electric energy instantaneously as customers switch on their lights, motors, and other appliances. As applied to the AEP System, this means that this system supplies instantly on customer demand every minute of every day unlimited quantities of electric energy—the energy generated as needed being delivered at the speed of light, or about 186,000 miles per second.

The operations of the AEP System are carried out by highly skilled coordinators through complex computations and communications in the centralized system dispatching office located in Columbus, Ohio. The coordinators are able to trace the minute-to-minute fluctuations in the generating output of the AEP System's major plants, and the minute-to-minute power flow over its interconnections with the nineteen non-affiliated systems.

---

[1] While twenty-five sales are listed in the order to show cause, the number in issue has been reduced to twenty-four by Indiana & Michigan's purchase of the Portland, Indiana electric system. The twenty-four sales are made to fourteen municipals and seven cooperatives in Indiana, and to two municipals and one cooperative in Michigan.

[2] The AEP System's six operating companies are: Indiana & Michigan, Appalachian Power Company, Kentucky Power Company, Kingsport Utilities, Inc., Ohio Power Company, and Wheeling Electric Company.

[3] The nineteen non-affiliated systems interconnected with the AEP System are: Commonwealth Edison Company of Illinois, Northern Indiana Public Service Company in Indiana; Public Service Company of Indiana in Indiana; Indianapolis Power and Light Company in Indiana; The Cincinnati Gas & Electric Company in Ohio; Illinois Power Company in Illinois; Cleveland Electric Illuminating Company in Ohio; Columbus and Southern Ohio Electric Company in Ohio; Ohio Valley Electric Corporation in Ohio and Kentucky; Indiana-Kentucky Electric Corporation in Indiana; West Penn Power Company in Pennsylvania; Monongahelia Power Company in West Virginia; Duquesne Light Company in Pennsylvania; Tennessee Valley Authority; Carolina Power & Light Company in North Carolina; Duke Power Company in North Carolina; Virginia Electric & Power Company in Virginia; Michigan Gas and Electric Company in Michigan; and Toledo Edison Company in Ohio.

At the time of the hearing the Duquesne interconnection was not in service.

Because the planners of the AEP System were early aware of the fact that it was technologically possible to transmit power over long distances, they gradually incorporated in system operations the techniques and economic advantages of exchanging power between their own plants and those of non-affiliates.

The AEP System has in fact for many years "been the most interconnected electric power system in the nation" and it is "constantly carrying out technical and economic studies aimed at developing and strengthening [its] high-voltage ties with neighboring utilities and making maximum use of them. The result is increased mutual benefits in lower production costs and reduced capital expenditures for new generation and transmission facilities that otherwise would be required." (Exhibit 48, p. 21)[4]

The AEP System is properly represented as "one of the world's principal and most progressive electric systems". It has achieved this prominence because the efforts of its creators seem never to have been directed at a terminal point. Rather the system's future has always been regarded as an open vista, the result being that it has evolved as the kind of electric system which creates the groundwork for progress and accelerates the nation's economic growth the most.

Because those responsible for the creation and continued expansion of the AEP System and its widening interconnection with nonaffiliates appear to have envisioned, aspired and achieved more than the management of any other electric system, this system is more representative than any other of the striking changes, interconnections, rearrangements, improvements and technological progress that have taken place in the nation's rapidly expanding systems and power pools.

---

[4] The AEP System is a system which works in coordination with other systems from construction of generating plants to the delivery of power.

AEP's 1962 Annual Report (Exhibit 48) discusses the manner in which it is continuing to strengthen its interconnections, stating in part:

Every hour the AEP System and neighboring interconnected utilities project operating costs for the coming hour and schedule interchanges to minimize these costs. For 1962 alone, the resultant reduction in AEP production expenses was an estimated $500,000. Another measure of interconnection value is the fact that our emergency interchanges with other power systems reached a maximum of 600,000 kw in 1962.

The highlight of our interconnection work in 1962 was the execution of a 50-year agreement with the Duquesne Light Company of Pittsburgh. It provides for our firm sale of a minimum of 35,000 kw to Duquesne for a two-year period, as well as for mutual standby energy, exchange of energy for coordinated maintenance, short-term power and economy energy. We estimate that about 250 million kwh of economy energy will be sold annually to Duquesne. To facilitate this exchange, a 36-mile, 345,000-volt line will be constructed by 1965 to interconnect the AEP and Duquesne systems.

Contractual arrangements were completed for a 345,000-volt interconnection with Northern Indiana Public Service Company and an increase in our firm sale to that utility. We also made arrangements for the sale of 150,000 kw to Commonwealth Edison Company of Chicago during the Summer of 1965, similar to our previously announced sale of 300,000 kw during the summer of 1964.

Two 138,000-volt interconnections with Public Service Company of Indiana are under construction, and a lower-voltage emergency interconnection with the Dayton Power and Light Company is under way. In addition, we are studying and negotiating with a three-company Ohio pool on the coordinated development of 345,000-volt transmission between the AEP System and the pool, made up of the Cincinnati Gas & Electric Company, Columbus and Southern Ohio Electric Company, and the Dayton utility. We are also looking into possible arrangements for the interchange of power with the Virginia-Carolina Pool, comprising Carolina Power and Light Company, Duke Power Company, Virginia Electric & Power Company and South Carolina Electric & Gas Company.

Finally, we are engaged in study and negotiation with the Allegheny Power System with special attention being given to a future 500,000-volt interconnection between Allegheny and AEP at our Kammer Plant. This line would be the western tie of a $350 million coordinated construction program involving over 2 million kw of new generating capacity and 600 miles of 500,000-volt transmission lines being planned by 18 investor-owned electric companies of the Middle Atlantic region, including those serving New York City, New Jersey and eastern Pennsylvania.

Complete integration and pooling of power producing and transmitting facilities has been achieved under the AEP System arrangement. Power flows throughout the system on the basis of need. The operations of this system are therefore fundamentally and predominantly interstate in character from beginning to end, with all parts of the area served being put on the same basis, it being designed, operated, expanded, and continues to be expanded, to serve any part and all parts of the seven-state area equally well (see *infra*, pp. 767-774).

The AEP System, like all integrated power systems, was created for the benefit of the area served and the systems serving it, and secures for its members the economic benefits of the diversities of time, load, reserves and resources. It is for this reason that integrated system operation is being rapidly expanded by additional interconnections and facilities that are economically feasible and physically practicable. Such interconnection and coordination of facilities by whomsoever owned accomplishes not only reduced overall investment and large operating economies, but opens up new territory to the benefits of electric service, aids in the progressive decentralization of industrial activity, including war plants and military bases, and makes available on a regional scale reliable electric service at the lowest cost.

Expanding power pools, such as that of which the AEP System is a part, are not only inseparable from further development of the nation through increasing production and better living, but are an absolute necessity for emergency purposes. Moreover, such power pools are essential to the health of the electric industry itself for the industry must meet competition from other fuels fast reaching out to challenge.[5]

The operations and progress of the AEP System, like that of many other systems, make it apparent that change and technological progress in the industry is so swift, so wide, and the prospect of acceleration so great, as to make regulatory guides of the past misleading as guides for the future. In this day and time, for the Commission to be up to date on energy flows over major systems such as AEP's means no more than to be on the verge of becoming out of date. Yet the Commission has the responsibility of coping with change and technological progress in carrying out the intent of the Act to protect consumers. It must therefore find the means of maintaining regulatory order in the midst of change and progress.[6] (See *infra*, p. 766.)

In this case the Commission Staff deems use of the tracing method employed in prior cases to be unnecessary to establish Commission jurisdiction over the wholesales sales here in issue. Each of the twenty-four sales is a pool sale, and, in the light of the interstate nature of the pool, Staff counsel contend that these sales are in interstate commerce subject to Sections 201, 205 and 206 of the Act. The Staff therefore requests that Indiana & Michigan be ordered to file as rate schedules the contracts which it has with the twenty-four municipals and cooperatives.

---

[5] It is because of the beneficial results produced by power pool operation that the Commission is empowered and directed by Section 202 of the Act to divide the country into regional districts for the voluntary interconnection of facilities for the generation, transmission and sale of electric energy.

[6] It is a matter of common knowledge that the use of electric energy in this country has followed a long-term growth rate of approximately doubling every ten years. During the post-war years this rate of increase has been about two and one-half times the average growth of the whole economy, as measured by the Gross National Product. To continue to meet the growing demand for electricity, the industry will probably have to build as much electric generating capacity in the next ten years as has been built in its entire history.

Not only is use of the tracing method out of place in modern large-scale integrated operations, but unnecessary (see *infra*, pp. 764–766) in the light of the decision of the Supreme Court in *Pennsylvania Water & Power Co.* v. *Federal Power Commission*, 343 U.S. 414, hereinafter referred to as the *Penn Water* case, holding that "the Federal Power Commission has complete authority to regulate all of this commingled power flow." Moreover, the omission of the use of the tracing method in power pool operations is clearly desirable to keep rate jurisdictional determinations within timely, manageable and sensible bounds.

If, as counsel for Indiana & Michigan contend, the Commission may not legally omit use of the tracing method in the circumstances of this case, the matter is one with which Congress must deal if the Commission is ever to have any hope of meeting its statutory responsibility of protecting consumers and otherwise causing compliance with the Act.

It has, of course, long been recognized that effective regulation requires expertness not possessed by Congress at the time it enacts legislation. Moreover, the solution of many regulatory problems can be worked out only by the use of appropriate and, at times, different methods; by trial and error; and with the aid of court decision. What method, formula or procedure may be appropriately used by the Commission in various types of cases arising under the Act depends upon the intent of the statute and many circumstances. The circumstances vary with time, economic conditions and technology as the industry evolves and the need for service grows.

It is because effective regulation does not permit a rigid and detailed statute that Congress has delegated to the Commission wide latitude in order to keep regulation sufficiently flexible and adapted to varying conditions and methods. Such flexibility also enables the Commission to accomplish, to the extent possible, the purposes of the statute by avoiding methods which have a tendency to clog the administrative process. To borrow the words of the court in *Public Service Comm'n of State of New York* v. *Federal Power Commission*, 327 F. 2d 893, 897, equally applicable here, Congress realized "that the Commission would be confronted with unforeseen problems of administration in regulating this huge industry and should have a basis for coping with such confrontation. While the action of the Commission must conform with the terms, policies and purposes of the Act, it may use means which are not in all respects spelled out in detail."

While the Commission, in administering the Act, must keep its feet on the ground and within statutory objectives, it must likewise keep them moving with actions and procedures that keep pace with the change taking place in the industry so as not to become smothered by change. Its task is not just to keep up, rather it is to try to keep ahead by continuous formation and reappraisal of its policies and procedures. Change, of course, has always been a part of the industry's progress. What is different now is the pace of change and the clear prospect that it will continue to accelerate with time.

Because the power industry is growing faster than ever, and since the Commission in large measure finds its justification in meeting and properly handling changing conditions and problems in the total public interests, it should come as no surprise that, in living up to the responsibilities entrusted to it, the Commission does not and cannot always regard regulatory methods as being encased in the cement of the past. It must realize that time does not ease its problems but proliferates them; that progress not only provides opportunity but creates new and even more difficult problems requiring updated thinking matching industry progress. Accordingly, the Commission has no alternative but to keep moving toward better ways of doing things if the intent of the Act is to be given continuous vitality in terms of current conditions.

The unique and inherent characteristics of the power pool and the nature of the product not only distinguish the instant case from *Peoples Natural Gas Co.* v. *Public Service Commission*, 270 U.S. 550, relied on by Indiana & Michigan to exempt the sales made by it in the State of Indiana from Commission regulation (see *infra*, pp. 776–779) but also support the conclusion that the twenty-four sales here involved are in interstate commerce although they involve varying amounts of energy never crossing State lines. In this regard it should be noted that the commingling of energy flowing interstate with that generated intrastate does not destroy the interstate character of the resulting mixture over which sole jurisdiction is vested in the Commission. Furthermore, the fact that out-of-state energy may at times be small in proportion to the total amount sold by the wholesaler is unimportant (*Connecticut Light & Power Co.* v. *Federal Power Commission*, 324 U.S. 515, 535–536; *Wisconsin Michigan Power Co.* v. *Federal Power Commission*, 197 F. 2d 472, 478, cert. denied 345 U.S. 934).

Filing Requirement

The procedure for filing individualized arrangements entered into between public utilities (such as Indiana & Michigan) and resale customers is set forth in Section 205 of the Act and Part 35 of the Commission regulations issued thereunder. To borrow the words of the Supreme Court in *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp. et al.*, 350 U.S. 332, 339, equally applicable here, the Act "permits the relations between the parties to be established initially by contract, the protection of the public interest being afforded by supervision of the individual contracts, which to that end must be filed with the Commission and made public."

Acting pursuant to the filing requirement, Indiana & Michigan filed with the Commission its contracts and schedules covering wholesale sales made by it to private utilities. Such filings, however, did not embrace the wholesale sales made to the twenty-four municipals and cooperatives here in issue. This proceeding was therefore initiated to determine whether these twenty-four sales are wholesale sales for resale in interstate commerce subject to regulation under the Act.

As has long been held, the Commission's rate jurisdiction extends to all interstate wholesale sales for resale made by a "public utility", regardless of whether made to private utilities, cooperatives,[7] or public bodies such as municipals, counties and the Department of the Navy (*Federal Power Commission* v. *Southern California Edison Co.*, 376 U.S. 205, herein referred to as the *Colton* case: *Penn Water*, 343 U.S. 414; *United States* v. *Public Utilities Commission of California*, 345 U.S. 295 (1953); *California Electric Power Co.* v. *Federal Power Commission*, 199 F. 2d 206 (1952), cert. denied 345 U.S. 934; *State of Wisconsin* v. *Federal Power Commission*, 201 F. 2d 183, cert. denied 345 U.S. 934 (1952); *Wisconsin Michigan Power Co.* v. *Federal Power Commission*, 197 F. 2d 472

---

[7] The fact that a cooperative resells only to its members is of no more significance, insofar as Commission rate jurisdiction is concerned, than the fact that the Department of the Navy in a prior case resold only to occupants of a housing project which was built for and occupied by civilian employees of the Depot (*California Electric Power Co.* v. *Federal Power Commission*, 199 F. 2d 206, aff'd 345 U.S. 295).

Whether a cooperative sells to members or non-members has no relevance to the issue of whether Indiana & Michigan's sales to cooperatives are subject to Commission regulation. The Commission is here regulating sales to cooperatives—not the cooperatives.

(1952), cert. denied 345 U.S 934). For example, in the *California Electric* case it was held, *inter alia*, that while Section 201(f) of the Act exempts the public bodies enumerated therein from the regulatory requirements of the statute, such bodies are nevertheless protected by the Commission's power to regulate jurisdictional sales and services by a "public utility" to them. In the words of the court (199 F. 2d at 208–209):

> Nor is § 201(f) of help to the petitioner. This section states that "No provision in this Part shall apply to, or be deemed to include, United States, a state or any political subdivision of a State * * *." It is clear that the intended exclusion or exemption is from the regulatory burdens of the statute. * * * But it would be inconsistent with the policy of the legislation * * * to hold that, as wholesale purchasers of power they are excluded from the benefits of the regulation of the utilities from which they buy. The entire thrust of Part II is toward the seller at wholesale, not the buyer.

And as held in the *Michigan Wisconsin* case, *supra*, 197 F. 2d at 479:

> To exempt municipal corporations would mean, as the Commission states in *Otter Tail Power Co.*, 2 FPC 134, 137, 33 PUR NS 257, 260, that "a utility may not discriminate in rates charged private persons or corporations, but is at complete and unfettered liberty to indulge in the rankest discrimination as between municipalities, or as between private customers and municipalities, receiving the same service." We cannot conceive that Congress intended to deprive consumers served by municipally owned distribution systems of the protection it was providing customers of other corporations against unjust and unreasonable rates. To construe the Act otherwise would fail to give effect to other provisions, such as Section 306, allowing municipalities to file complaints before the Commission on account "of anything done or omitted to be done" in contravention of the Act and Section 313(a), which authorized review of Commission orders at the behest of any aggrieved municipalities. We agree with the Commission's comment in *Otter Tail Power Co.* v. *F.P.C.*, *supra*, at 138: "Since the most serious, if not the only real complaint a municipality could have against a public utility would involve the rates charged it for electric energy at wholesale (the Commission has no power to regulate the retail rates of a public utility), it is most persuasive Congress intended that we have jurisdiction over such wholesale rates."

In considering the instant proceeding it should be borne in mind that until about 1953 the Commission was making rather long strides in regulating public utilities, but beginning about that time the Commission's work under the Natural Gas Act was accelerating at such a rate that it siphoned off most of the Commission's staff which had been handling power matters. Now that the Commission has staffed a division for the handling of electric power rate work, it has renewed activity in this field. As stressed in the Commission's Press Release No. 12,326, dated November 14, 1962, the "new emphasis on electric rate work is not in any sense an attempt to broaden its jurisdiction, 'but is merely a more effective exercise of a jurisdiction which was conferred in 1935 and which has been carried out with varying degrees of intensity since that time.'"

In view of the prior lack of Commission personnel to handle power matters, and because of the Commission's obligation to fulfill its statutory duty of causing compliance with the Act, the Examiner attaches no significance to the fact, asserted by Indiana & Michigan to be of importance, that it was not until the institution of this proceeding that the Commission has sought to establish jurisdiction over the twenty-four sales here in issue. Nor is it of any consequence, as Indiana & Michigan further contends, that the Public Service Commissions of Indiana and Michigan have exercised jurisdiction over these sales. As held in the 1952 *Wisconsin case, supra*, 201 F. 2d 183, 185, cert. denied 345 U.S. 934, and as reaffirmed by the action taken in numerous other Commission and court decisions, "a history of previously unchallenged regulation by the State does not oust the Commission of jurisdiction."

Clearly the Commission's authority does not evaporate through nonuse. Moreover, it would be inconsistent for the Commission to regulate interstate wholesale sales for resale made by the public utilities to cooperatives and municipals considered in prior cases and not regulate the twenty-four sales here in issue for which filings have not as yet been made, assuming, of course, such sales are sales at wholesale in interstate commerce and therefore subject to regulation under Part II of the Act.

Interveners

By orders of the Commission, the Public Service Commissions of Indiana, Michigan, Wyoming, Pennsylvania, Georgia and Maryland, and the Indiana Municipal Electric Association[8] were permitted to intervene. However, the Wyoming, Maryland and Indiana Public Service Commissions were allowed to withdraw "without prejudice to their continued participation in this proceeding if they so desire to do so". None of them elected to continue participation. In fact, no appearance was ever entered for the Wyoming, Pennsylvania, Georgia and Maryland Commissions.[9] (See *infra*, p. 766, n. 15.)

Moreover, none of the interveners offered any evidence or filed briefs in this proceeding, nor did any of them participate in the cross-examination of any of the witnesses. A statement of position was, however, filed by the Indiana Municipal Electric Association on August 25, 1964, in which it adopted "the arguments, conclusions and proposed findings of fact advanced by the staff in its opening brief."

Procedural Background

By letter dated January 2, 1963, the Commission advised Indiana & Michigan of facts indicated in its files relating to its operations and customers and requested it to undertake appropriate action to establish rate schedules for its wholesale sales to municipals and cooperatives pursuant to the requirements of Section 205 of the Act and Part 35 of the regulations issued under the Act.[10] Thereafter counsel for Indiana & Michigan requested an extension of time within which to take the matter under consideration and were given until February 28, 1963, to complete the company's rate filings. No further response having been received by April 16, 1963, 29 FPC 746, the Commission on that date issued its order to show cause initiating this proceeding.

---

[8] The members of the Indiana Municipal Electric Corporation include all of the Indiana municipalities to which Indiana & Michigan sells electric energy at wholesale.

[9] An example of the valuable assistance which the Commission is at times able to render to State agencies and ultimate consumers is represented by the *Penn Water* rate case in which Penn Water was required to reduce its interstate wholesale rates and charges for electric energy by approximately $2,000,000 annually. That proceeding was instituted at the urgent request of Maryland authorities and, from the standpoint of rate making and jurisdiction, has had one of the most profound and lasting effects of any Commission case. As the Supreme Court stated in part (343 U.S. at 416–417):

> In 1944 the Maryland Public Service Commission, the Mayor and Council of the City of Baltimore, the Baltimore County Commissioners, and several private purchasers of electric power decided to ask the Federal Power Commission for help. They requested the Commission to investigate allegedly "excessive rates" the Pennsylvania Water & Power Company (Penn Water) was charging Consolidated Gas Electric Light and Power Company of Baltimore (Consolidated). The Maryland interests wanted the Federal Power Commission to reduce these charges so that the State commission could lower Consolidated's rates to its Maryland customers. The Federal Commission held many months of extensive hearings and found that Penn Water had charged its customers almost three times what it should have in 1946. In that year it had a net operating income of $3,477,408, as contrasted with $1,300,672 which the Commission found would have been a fair return (5¼%) on a fair rate base ($24,774,712), allowing Penn Water "about 8.64 percent for common stock and surplus, which is adequate." The Commission ordered Penn Water to file a new schedule of rates and charges to bring about the reductions required.

The Commission rarely, if ever, has advance notice as to companies which will challenge its jurisdiction. But the Commission is always aware that if its jurisdiction is challenged it must meet that challenge, if it believes it unwarranted, not only through the issuance of a show cause order, but also on a hearing record reflecting the true operations and capabilities of the electric system involved. The applicable operating facts in any particular case will not only be facts common to all parties but facts which are, and have always been, in possession of the company resisting Commission jurisdiction—as Indiana & Michigan continues to do here.

The show cause order issued April 16, 1963 required Indiana & Michigan to respond thereto on or before May 6th and fixed June 3, 1963, as the date for commencement of the hearing. Indiana & Michigan was directed to show cause, through written answer and orally at a public hearing, why the Commission should not: (1) find it to be a "public utility"; (2) find its sales for resale to municipals and cooperatives to be sales at wholesale for resale in interstate commerce subject to regulation under Sections 205 and 206 of the Act, for which Indiana & Michigan must file rate schedules in the manner set forth in Part 35 of the regulations; (3) find that at least since January, 1961, Indiana & Michigan has been violating and threatens to continue violating the Act and the regulations; (4) order Indiana & Michigan to file schedules for service to the twenty-four municipals and cooperatives; and (5) take such further action as may be necessary and appropriate to cause Indiana & Michigan to comply with the Act.

On May 3, 1963, the Public Service Commission of Indiana filed a motion for a concurrent hearing on the order to show cause, reserving its right to intervene, and requesting a continuance of the hearing.

As required by the order to show cause issued April 16, 1963, Indiana & Michigan, on May 6, 1963, responded thereto by denying that the wholesale sales made to the municipalities and cooperatives are jurisdictional sales and requested that the order "be forthwith vacated and that this proceeding be terminated and dismissed." The Commission, believing that an evidentiary hearing was needed, denied Indiana & Michigan's request, stating in its order issued May 29, 1963, 29 FPC 1094:

> The request * * * that the Commission vacate its order of April 16 is predicated upon legal conclusions based, in large measure, upon factual allegations which the Commission is unprepared to accept unless they are established at a hearing. The Commission's original order directed a hearing for just this purpose. We are therefore denying the motion * * * *and shall decide the issues raised by the motion upon the record after hearing.* [Italics supplied.]

The order of May 29, 1963, also denied the request of the Indiana Commission for a concurrent hearing, but granted it intervention in this proceeding. In so doing, the Commission noted that—

---

[10] During the time that the Commission had the *Colton* case (376 U.S. 205) under consideration it sent a number of letters to companies inquiring as to the lack of filed rate schedules for all interstate wholesale sales for resale, particularly sales made to municipals. Many public utilities thereafter voluntarily filed previously unfiled rate schedules covering interstate wholesale sales for resale. Others, including Indiana & Michigan, failed to do so.

> * * * since this proceeding concerns the requirements of the Federal Power Act and not the provisions of the company's contract for service to wholesale customers, we do not believe that a concurrent hearing would be helpful.
>
> A concurrent hearing on such a matter has previously resulted in unnecessary, multiple litigation. *United States* v. *Public Utilities Commission of California*, 345 U.S. 295 (1953).
>
> This is not to say that in future proceedings concerning rates of the Company, the concurrent hearing procedure may not be appropriate. We, therefore, deny the motion of the Indiana Commission, but will treat its moving papers as a notice of intervention * * *.

Further, the order of May 29, 1963, continued the commencement of the hearing from June 3 to July 29, 1963, doing so for the following reason:

> We have been informed by staff that a representative of the Company, as well as the State Commission, feels that additional time is required to prepare for the hearing. A reasonable opportunity should certainly be afforded to prepare the material which the parties wish to present.
>
> We have granted more than the full time requested in order that the hearing may proceed without further adjournment.

By order issued July 23, 1963, 30 FPC 391, the Commission denied two applications dated July 16, 1963, in which Indiana & Michigan had applied to take testimony by deposition and for the issuance of subpoenas *ad testificandum* and *duces tecum*. The first application requested and ordered for subpoenas *ad testificandum* for taking the testimony, by deposition, of the Chairman of the Commission, its Secretary, and a Commission engineer. The Commission ruled that—

> To the extent Indiana-Michigan wants to examine staff witnesses who may appear in this case to testify as to material matters, it will have opportunity to do so at the trial. Commission members, however, may not be examined either by deposition or at the hearing. * * * Data in the public files and records of the Commission are now and have been available to Indiana-Michigan.[11]

Concerning the second application filed by Indiana & Michigan the Commission pointed out:

> The reasons for the depositions and the subject matter of the requested examination are set forth in the second application, titled Application of Subpoena Duces Tecum.
>
> The Application for Subpoena Duces Tecum is in the nature of a blanket request for data relating to "the bases, criteria, expert opinion, studies and analyses" underlying the issuance of the Order to Show Cause initiating this proceeding. * * * But the relevance or materiality of such material to the facts upon which the issue of Commission jurisdiction must be determined is not demonstrated.[12]

---

[11] In a ruling issued March 3, 1964, the Examiner stated in part:

"Clearly parties to a Commission proceeding may not properly probe the mental processes, or invade the Commission's right of privacy, in connection with its deliberations relating to the issuance of Show Cause or other Orders initiating proceedings authorized or required by the Act. Any agency which permitted such an invasion would likely open itself up to 'the evil of harassment', the result being that the function of initiating and 'deciding controversies might soon be overwhelmed by the duty of answering questions about them'." (*National Labor Relations Board* v. *Botany Worsted Mills*, 106 F. 2d 263, 267.)

[12] The Examiner further pointed out in his ruling of March 3, 1964, that:

Indiana & Michigan sought the issuance of a subpoena *duces tecum* for the production, prior to the commencement of hearings, of certain data relating to issues raised by the

As already pointed out, the hearing, initially scheduled to commence June 3, 1963 was, by the Commission's order issued May 29, 1963, adjourned to July 29, 1963. Sessions of the hearing were held on that day, on September 4, October 2, 8, 14, and 18, 1963. No evidence was taken at any of the first six preliminary sessions.

At the initial session held July 29, 1963, counsel for Indiana & Michigan, instead of presenting the company's case-in-chief, as the Commission's order issued May 29, 1963 contemplated it would do—such order having delayed the commencement of the hearing from June 3 to July 29, "in order that the hearing may proceed without further adjournment" (*supra*, p. 760) countered the Commission's order by repeating requests of Indiana & Michigan for subpoenas and depositions which had been denied by the Commission's order issued six days earlier, or on July 23, 1963. The Examiner, by ruling issued August 9, 1963, again denied the requests on the basis set forth in such ruling (Tr. 120–124), pointing out that the circumstances had not changed during the six-day interval and that the "Commission contemplated that the Examiner would take appropriate action during the course of the hearing" on the evidence, not prior thereto. In the Examiner's view, the requests of counsel for Indiana & Michigan, repeated to the Examiner, put counsel for the company in "the untenable position of requesting a Hearing Examiner to overrule the Commission."

At the initial or preliminary session of the hearing held July 29, 1963, the Examiner fixed September 4, 1963, as the date on which Indiana & Michigan would file its direct case. This was more than thirty days in excess of that contemplated in the Commission's order issued May 29, 1963 (*supra*, p. 760). In so directing Indiana & Michigan the Examiner was not only mindful of what the Commission's order issued May 29, 1963 contemplated, but was also aware of the ruling of the court in *United Gas Pipe Line Co.* v. *Federal Power Commission*, 206 F. 2d 842, which sustained a Commission order requiring a company not having the burden of proof to go forward first with the presentation of evidence. In this connection it may appropriately be pointed out that the controlling facts governing the determination to be made in this proceeding were, and had always been, within the intimate knowledge of those comprising the AEP organization, of which Indiana & Michigan was an integral part, and could

---

Order to Show Cause herein and various orders and official communications of the Commission.

At the outset of this proceeding, the Commission made it clear that statements made by it in its Order to Show Cause, insofar as their evidentiary value is concerned, must be considered in accordance with the directions laid down by the Commission in its Rules of Practice and Procedure (Tr. 15). Section 1.6(d) of such rules proves in pertinent part that statements in orders to show cause—

> * * * shall be deemed to be tentative and for the purpose of framing issues for consideration and decision by the Commission in this proceeding * * *

In substance, Section 1.6(d) recognizes that statements of fact or conclusions of law contained in Orders to Show Cause are not to be taken as proven to be correct simply because they are set forth in such orders but are tentative, *i.e.*, subject to proof as issues in the proceeding. If the situation were otherwise, there would be no point in holding a hearing since the case would be established simply through the issuance of a Show Cause Order.

Not only do the rules of the Commission provide that statements made in Show Cause Orders do not have the characteristics of evidence, unless admitted by the respondent, but the Commission also made this abundantly clear in its order issued May 29, 1963, by pointing out that the decision in this proceeding will be based solely on the evidence contained in the record made and on no other basis. * * * (See *supra*, p. 759.)

> * * * since this proceeding concerns the requirements of the Federal Power Act and not the provisions of the company's contract for service to wholesale customers, we do not believe that a concurrent hearing would be helpful.
>
> A concurrent hearing on such a matter has previously resulted in unnecessary, multiple litigation. *United States* v. *Public Utilities Commission of California*, 345 U.S. 295 (1953).
>
> This is not to say that in future proceedings concerning rates of the Company, the concurrent hearing procedure may not be appropriate. We, therefore, deny the motion of the Indiana Commission, but will treat its moving papers as a notice of intervention * * *.

Further, the order of May 29, 1963, continued the commencement of the hearing from June 3 to July 29, 1963, doing so for the following reason:

> We have been informed by staff that a representative of the Company, as well as the State Commission, feels that additional time is required to prepare for the hearing. A reasonable opportunity should certainly be afforded to prepare the material which the parties wish to present.
>
> We have granted more than the full time requested in order that the hearing may proceed without further adjournment.

By order issued July 23, 1963, 30 FPC 391, the Commission denied two applications dated July 16, 1963, in which Indiana & Michigan had applied to take testimony by deposition and for the issuance of subpoenas *ad testificandum* and *duces tecum*. The first application requested and ordered for subpoenas *ad testificandum* for taking the testimony, by deposition, of the Chairman of the Commission, its Secretary, and a Commission engineer. The Commission ruled that—

> To the extent Indiana-Michigan wants to examine staff witnesses who may appear in this case to testify as to material matters, it will have opportunity to do so at the trial. Commission members, however, may not be examined either by deposition or at the hearing. * * * Data in the public files and records of the Commission are now and have been available to Indiana-Michigan.[11]

Concerning the second application filed by Indiana & Michigan the Commission pointed out:

> The reasons for the depositions and the subject matter of the requested examination are set forth in the second application, titled Application of Subpoena Duces Tecum.
>
> The Application for Subpoena Duces Tecum is in the nature of a blanket request for data relating to "the bases, criteria, expert opinion, studies and analyses" underlying the issuance of the Order to Show Cause initiating this proceeding. * * * But the relevance or materiality of such material to the facts upon which the issue of Commission jurisdiction must be determined is not demonstrated.[12]

---

[11] In a ruling issued March 3, 1964, the Examiner stated in part:

"Clearly parties to a Commission proceeding may not properly probe the mental processes, or invade the Commission's right of privacy, in connection with its deliberations relating to the issuance of Show Cause or other Orders initiating proceedings authorized or required by the Act. Any agency which permitted such an invasion would likely open itself up to 'the evil of harassment', the result being that the function of initiating and 'deciding controversies might soon be overwhelmed by the duty of answering questions about them'." (*National Labor Relations Board* v. *Botany Worsted Mills*, 106 F. 2d 263, 267.)

[12] The Examiner further pointed out in his ruling of March 3, 1964, that:

Indiana & Michigan sought the issuance of a subpoena *duces tecum* for the production, prior to the commencement of hearings, of certain data relating to issues raised by the

As already pointed out, the hearing, initially scheduled to commence June 3, 1963 was, by the Commission's order issued May 29, 1963, adjourned to July 29, 1963. Sessions of the hearing were held on that day, on September 4, October 2, 8, 14, and 18, 1963. No evidence was taken at any of the first six preliminary sessions.

At the initial session held July 29, 1963, counsel for Indiana & Michigan, instead of presenting the company's case-in-chief, as the Commission's order issued May 29, 1963 contemplated it would do—such order having delayed the commencement of the hearing from June 3 to July 29, "in order that the hearing may proceed without further adjournment" (*supra*, p. 760) countered the Commission's order by repeating requests of Indiana & Michigan for subpoenas and depositions which had been denied by the Commission's order issued six days earlier, or on July 23, 1963. The Examiner, by ruling issued August 9, 1963, again denied the requests on the basis set forth in such ruling (Tr. 120–124), pointing out that the circumstances had not changed during the six-day interval and that the "Commission contemplated that the Examiner would take appropriate action during the course of the hearing" on the evidence, not prior thereto. In the Examiner's view, the requests of counsel for Indiana & Michigan, repeated to the Examiner, put counsel for the company in "the untenable position of requesting a Hearing Examiner to overrule the Commission."

At the initial or preliminary session of the hearing held July 29, 1963, the Examiner fixed September 4, 1963, as the date on which Indiana & Michigan would file its direct case. This was more than thirty days in excess of that contemplated in the Commission's order issued May 29, 1963 (*supra*, p. 760). In so directing Indiana & Michigan the Examiner was not only mindful of what the Commission's order issued May 29, 1963 contemplated, but was also aware of the ruling of the court in *United Gas Pipe Line Co.* v. *Federal Power Commission*, 206 F. 2d 842, which sustained a Commission order requiring a company not having the burden of proof to go forward first with the presentation of evidence. In this connection it may appropriately be pointed out that the controlling facts governing the determination to be made in this proceeding were, and had always been, within the intimate knowledge of those comprising the AEP organization, of which Indiana & Michigan was an integral part, and could

---

Order to Show Cause herein and various orders and official communications of the Commission.

At the outset of this proceeding, the Commission made it clear that statements made by it in its Order to Show Cause, insofar as their evidentiary value is concerned, must be considered in accordance with the directions laid down by the Commission in its Rules of Practice and Procedure (Tr. 15). Section 1.6(d) of such rules proves in pertinent part that statements in orders to show cause—

> * * * shall be deemed to be tentative and for the purpose of framing issues for consideration and decision by the Commission in this proceeding * * *

In substance, Section 1.6(d) recognizes that statements of fact or conclusions of law contained in Orders to Show Cause are not to be taken as proven to be correct simply because they are set forth in such orders but are tentative, *i.e.*, subject to proof as issues in the proceeding. If the situation were otherwise, there would be no point in holding a hearing since the case would be established simply through the issuance of a Show Cause Order.

Not only do the rules of the Commission provide that statements made in Show Cause Orders do not have the characteristics of evidence, unless admitted by the respondent, but the Commission also made this abundantly clear in its order issued May 29, 1963, by pointing out that the decision in this proceeding will be based solely on the evidence contained in the record made and on no other basis. * * * (See *supra*, p. 759.)

obviously be presented with comparative ease and at any time counsel for Indiana & Michigan elected to do so.[13]

When the hearing reconvened on September 4, 1963, the Examiner again delayed the presentation of Indiana & Michigan's case until the "date that the staff and the other parties presented their direct cases" (Tr. 125–126). However, at a later session of the hearing held October 18, 1963, the Examiner fixed November 4, 1963, as the date on which the Commission Staff would file its direct case by mail, giving Indiana & Michigan and the interveners almost an additional month, namely, until December 2, 1963, to file their direct cases (Tr. 679). The Commission's order issued December 5, 1963 (Tr. 706–709), further extended the time within which Indiana & Michigan could file its direct case until December 9, 1963, and it was filed on that date.

As pointed out in the Examiner's ruling issued February 20, 1964 (Tr. 1157), Indiana & Michigan, in submitting its direct case pursuant to order of the Commission, "stated it reserved the right 'to offer additional evidence, to withdraw all or any part of the testimony and exhibits, which are hereby submitted conditionally, and to offer evidence in substitution therefor.' Since the Commission's order of December 5, 1963, makes no provision for submitting a direct case on any such conditional basis, and no good reason appearing for accepting such evidence on a conditional basis, the evidence submitted by Indiana & Michigan on December 9, 1963, will be treated by the Examiner as Indiana & Michigan's direct case. Staff counsel have already filed their exceptions thereto. It seems appropriate to point out here that Indiana & Michigan, since it filed its answer on May 3, 1963 to the Order to Show Cause, has been fully aware that it would have to submit a complete direct case on the date fixed by the Commission or the Examiner appointed to hear this case. It has therefore had ample opportunity to prepare a complete direct case" (Tr. 1157).

On December 9, 1963, counsel for Indiana & Michigan moved to strike the Staff's original direct case which had been filed on November 4, 1963. The Examiner, in granting this motion on the basis set forth in his ruling issued December 27, 1963 (Tr. 757–760), required, *inter alia*, the Staff to file a revised direct case on January 20, 1964, with the hearing to reconvene on February 18, 1964, for rulings on motions to strike and for cross-examination (Tr. 760). By a subsequent ruling issued January 16, 1964 (Tr. 696), the Examiner extended the time for filing of the Staff's revised direct case to February 4, 1964, and extended the date for reconvening the hearing to March 10, 1964. By another ruling issued February 20, 1964 (Tr. 1157), the Examiner had directed that "rebuttal testimony be filed thirty days after cross-examination on the direct cases is completed."

The hearing reconvened on March 10, 1964, and hearings were held on that date and at various dates thereafter until the hearing was concluded on June 11, 1964.

---

[13] At the preliminary session of the hearing held July 29, 1963, counsel for Indiana & Michigan stated his conception of this case and recognized that the business carried on by Indiana & Michigan give it a "public utility" status under the Act:

> The way I conceive this case, we are dealing with a jurisdictional fact and the jurisdictional fact is: Does this Commission have jurisdiction over the rates of Indiana and Michigan insofar as we are dealing with wholesale sales to municipalities and rural electric cooperatives.
>
> That is the jurisdictional fact. (Tr. 53)
>
> * * * * * * *
>
> We don't disagree that Indiana and Michigan * * * has in the past and now transmits some electric energy in interstate commerce within the meaning of the Act. (Tr. 73)
>
> * * * * * * *
>
> The order to show cause directs Indiana and Michigan * * * to show cause why these sales should not be held to be jurisdictional sales. (Tr. 74)

The argument of counsel for Indiana & Michigan that they did not have ample opportunity to meet the Staff's evidence is untenable. They, in fact, had six weeks in which to prepare their cross-examination after the service of the Staff's revised direct case on February 4, 1964. Furthermore, they had been aware of the nature of the Staff's presentation since the filing of its original direct case on November 4, 1963.

The Staff presented its case through two witnesses. Cross-examination of these witnesses began on March 18, 1964. Cross-examination of the first witness was limited to two questions (Tr. 1381–82). Company counsel then proceeded to cross-examine the Staff's engineering witness for fourteen hearing days, such cross-examination covering 1128 pages of the transcript, and was completed on April 17, 1964 (the subsequent cross-examination of this witness, insofar as his rebuttal testimony was concerned, covers an additional 294 pages of the transcript).

Following the completion of all cross-examination on the direct cases on April 21, 1964, the Examiner, consistent with his prior ruling made on February 20, 1964, gave counsel for Indiana & Michigan and the Staff thirty days, or until May 21, 1964, in which to prepare and serve their rebuttal evidence (Tr. 2946). Accordingly, the hearing was recessed on April 21, 1964 until June 1, 1964, at which time the rebuttal evidence was incorporated in the record and June 9, 1964 was, with the agreement of counsel (Tr. 3068), fixed as the date for beginning cross-examination thereon. As stated above, the hearing concluded on June 11, 1964.

Main and reply briefs were filed simultaneously by counsel for the Commission and for Indiana & Michigan on July 20 and August 21, 1964, respectively. The Examiner's ruling with reference to the filing of briefs was made at the conclusion of the hearing and was affirmed by the Commission.[14]

---

[14] Counsel for Indiana & Michigan complain that the time allowed by the Examiner for the filing of briefs did not enable them "to make the exhaustive analysis of the vast record in this proceeding which the rights of [Indiana & Michigan] and the importance of the matters involved require." The time allowed was longer than requested by Staff counsel. That it was adequate seems amply demonstrated by the fact that counsel for Indiana & Michigan include in their briefs, and request the Examiner to rule upon, a total of 552 proposed findings set forth on 141 pages of their briefs (see *infra*, p. 794). These proposed findings, exorbitant in number, are accompanied by record and other citations, and appear to cover every conceivable phase and aspect of this case from the point of view of company counsel.

That the briefing time allowed was fully justified is also shown by the large number of able company counsel—six—who entered their appearances in the record and presumably were available for brief writing and consultation; by the limited number of issues actually involved; the intimate familiarity of counsel and their technical assistants with the history and method of operation of the AEP System; and the familiarity of counsel, as shown by what transpired during the course of the hearing, with the legal questions involved.

Furthermore, as Staff counsel, in their answer to the appeal of Indiana & Michigan of the Examiner's ruling directing the simultaneous filing of briefs on specified dates, pointed out to the Commission:

> The time for briefing is adequate and reasonable. Simultaneous main briefs are to be filed * * * 39 days after the close of the hearings * * *. Simultaneous reply briefs are due 35 days [later] * * *.
>
> Although the transcript in this case contains 3400 pages, the first 750 pages all relate to procedural matters. Staff presented two witnesses and their direct and rebuttal testimony comprises only 390 pages. Most of the large exhibits consist of operating records of [Indiana & Michigan] or its parent * * * (AEP), or reports to the FPC filed by AEP or its subsidiaries. Respondent is intimately familiar with these records.
>
> The size of the exhibits is deceptive. Most of them illustrate a single condition obtaining over a long period of time and contain a few data sheets for each day of the year for the number of days selected from the AEP records for that year. This makes the exhibit large, but not necessarily complicated.

In requiring simultaneous filing of briefs the Examiner followed his normal procedure adhered to over many years. Past experience had demonstrated to the Examiner that briefs simultaneously filed proved far more helpful.

Standard of Proof Required

Counsel for Indiana & Michigan, contending that the pertinent standard of proof required by *Colton*, 376 U.S. at 209 n. 5, has not been met by the Commission Staff, request that this proceeding be dismissed. Their untenable position is rejected.

Before discussing the standard of proof referred to, it will be helpful to point out that a power system can be developed and operated in a number of ways and different ways are now and have been in use. Of all of these, the integration and pooling of power producing and transmitting facilities, even though the most complex and getting more so, has nevertheless become the soundest mechanism for dependable power supply and is the most economical because this method of coordinated operation enables the combined facilities to carry a combined utility load which exceeds the aggregate capacities of independent plants and to do so at a lower production cost than independent operation can achieve.

Turning now to the standard of proof which counsel for Indiana & Michigan refer as being established by *Colton* and prior cases. As declared in *Connecticut Light & Power Co.* v. *Federal Power Commission*, 324 U.S. 515, 529:

> * * * Federal jurisdiction was to follow the flow of electric energy, an engineering and scientific, rather than a legalistic or governmental test. Technology of the business is such that if any part of a supply of electric energy comes from outside a state it is, or may be, present in every connected distribution facility.

In *Colton* the Supreme Court reiterated what it had previously declared, namely, that federal jurisdiction follows the flow of the energy; the test under Part II of the Act being "engineering and scientific, rather than * * * legalistic or governmental." (376 U.S. at 209 n. 5.)

As the record makes abundantly clear, while there are limited situations in which it is possible to trace the flow of electric energy, the complex AEP System does not constitute such a situation. There are in fact no means presently known to science for identifying the particular source or sources of energy delivered by the AEP System to any particular point of sale. But this proceeding is not searching for an answer to what the experts so far find unanswerable. Rather it is concerned with the end result of what the experts have bound together with knowledge that it would function, and has functioned, to serve a seven-state area in such a manner as not to leave any part of the system without the resources and support of the system as a whole. This system of generation, transmission and distribution is part of an organic whole in which the development of one influenced the development of the other. It is therefore too late in the day for counsel for Indiana & Michigan to attempt to underplay the results attained in view of past substantiated pronouncements of the AEP System to the world that it has, for example, formed "a single major power system" in which "Each plant supports, and in turn is supported by the others."

The failure of the Staff to attempt to use the tracing method in this case can in no sense be regarded as a "legalistic or governmental" approach doing violence to the rule laid down in *Connecticut* and reiterated in *Colton*, for there is nothing "legalistic or governmental" involved in a recognition of the farsighted planning, basic engineering, advanced technology and scientific factors behind the development of the unrivaled AEP System that have been carried through to accomplish the purpose of enabling the system's operation as a single integrated unit by skilled coordinating personnel fully understanding and conversant with the anatomy thereof. The coordinating personnel possess and use the tools and techniques required to carry on continuously the minute-to-minute hour-to-hour, and day-to-day control operations which keep the system efficiently operating as an integrated unit to furnish the requirements of the portions of the seven-state area it serves, as well as to accomplish the interchange of power with other systems to assure maximum use of facilities and optimum economy.

Clearly, the development of the AEP System required the efforts of talented and dedicated men at every step of the way, in which their engineering and scientific decisions have been fundamental. For the Commission to recognize this fact constitutes adequate compliance with the "engineering and scientific" test, for the system demonstrates that it meets the objectives sought in its creation.

Subsequent to *Connecticut*, but prior to *Colton*, the Supreme Court handed down its decision in *Penn Water* sustaining the Commission's finding that the combined operations of the power pool there involved were completely interstate in character, notwithstanding the fact that at some particular times the sales transactions involved energy never crossing a state boundary.

Since all of the resources of the AEP System power pool are available to meet the combined load of its members, without reference to state boundaries, such a pool, as the Commission held in *Penn Water*, 8 FPC 1, constitutes an "integrated and coordinated interstate electric system." In that case the Commission further found that the sales of system energy, such as those by Pennsylvania Water & Power Company to its Pennsylvania utility customers, made without reference to the state of origin of the energy, were pool sales, and hence, in the light of the interstate nature of the pool, were sales in interstate commerce. The Commission accordingly concluded that Pennsylvania Water & Power Company was a "public utility" under Part II of the Act by virtue of its ownership and operation of facilities for the transmission and sale at wholesale of electric energy in interstate commerce, and that its sales for resale to Consolidated Gas Electric Light and Power Company of Baltimore, as well as its three Pennsylvania customers, were subject to Commission jurisdiction under Part II of the Act.

The Supreme Court, in affirming the Commission in *Penn Water*, ruled that "the Federal Power Commission has complete authority to regulate all of this commingled power flow." While the Commission in the simple operations involved in *Penn Water and other cases* (*Wisconsin Michigan Power Co.* v. *Federal Power Commission*, 197 F. 2d 472, cert. denied 345 U.S. 934; *State of Wisconsin* v. *Federal Power Commission*, 201 F. 2d 183, cert. denied 345 U.S. 934; *Otter Tail Power Co.*, 8 FPC 393), expended the necessary time and effort, and with the use of assumptions was able to trace out-of-state energy to each of the sales in question, no court has held that, to sustain the burden of proof concerning pool sales made without reference to the state of origin, the Commission is required to trace out-of-state energy to each of the sales made from the pool energy comprised of multistate sources. Nor is there reason or justification for such a requirement in the light of the fact that the Commission, as held in *Penn Water*, has "complete authority to regulate all" the commingled power flow. Having the authority to regulate "all" the commingled flow, the Commission, *a fortiori*, has the authority to regulate each part thereof comprising wholesale sales for resale without the necessity of tracing each part to the point of sale, even assuming this to be possible.

The Staff's engineering witness testified that the tracing method cannot be used to determine particular sources of power supply to particular loads on the AEP System. This is so because of the lack of meter readings of hour to hour loadings on all of Indiana & Michigan's transmission lines. The limited number of meter readings that are maintained by Indiana & Michigan are in evidence as Exhibit 1. This exhibit shows that meter readings are only taken by Indiana & Michigan at points of interconnection with other electric systems, at voltage transformation stations involving 345 or 138 kilovolts, and at generating stations.

But even if adequate meter readings were available, the Staff engineer not only had serious reservations as to whether a tracing study of Indiana & Michigan's system could be completed in less than a year—because of the complicated integrated network supplying the loads, but was of the further view that such a study would be meaningless because of the constantly changing loads, new additions of power plants and transmission lines, and retirement of old plants on such a modern integrated system. That is to say, by the time a tracing study was completed, the situation on the system could have changed completely.

Thus, as the Examiner has already observed (*supra*, p. 754), "In this day and time, for the Commission to be up to date on energy flows over major systems such as AEP's means no more than to be on the verge of becoming out of date."

Order Issued by Indiana Commission

Indiana & Michigan participated in a one-day hearing held by the Indiana Public Service Commission on December 5, 1963. Fifteen days later, or on December 20, 1963, the Indiana Commission issued an order classifying the energy delivered by Indiana & Michigan to its Indiana municipal and cooperative customers as energy generated, transmitted and consumed solely within the State of Indiana.[15] The inconsistency of action of the Indiana Commission with the belief of counsel for Indiana & Michigan is demonstrated by the fact that in their proposed finding No. 465, counsel request the Examiner to find—

> By reason of the practical day-to-day operation of the American Electric Power System, including the system of [Indiana & Michigan], it is impossible to determine which particular source of energy supplies a particular load on the system of [Indiana & Michigan] or on the American Electric Power System.

---

[15] The action of the Indiana Commission was summarized by its counsel in the following manner: "On November 29, 1963, Indiana Commission instituted a proceeding to investigate the standards for, and classification of, the electric service rendered by I. & M. to its municipal and REMC wholesale customers operating in Indiana. A public hearing was held and on December 20, 1963, Indiana Commission found that it had jurisdiction of the matter before it; that it had for many years exercised continuous and uninterrupted jurisdiction over the wholesale sales by I. & M. to the Indiana municipal and REMC utilities; that it had regulated the measurement and classification of electric energy furnished by I. & M. to said wholesale customers; that Indiana generation was considerably more than sufficient to permit the proposed classification and that it was in the public interest to do so. Thus, Indiana Commission ordered that, for any applicable period of measurement, the electric energy furnished by I. & M. to said municipal and REMC wholesale customers be classified as energy generated in the State of Indiana and that in the event, in any such period, sufficient Indiana generated energy was not available to supply said customers, such municipal and REMC utilities would receive the amount of Indiana generated energy available, in proportion to the total amount delivered during such period. * * * It is Indiana Commission's view, therefore, having determined its jurisdiction, now and in the past, in fair and impartial public hearings, that no advantage could be gained by proceeding further in this cause."

It was by a subsequent order issued February 11, 1964, that the Federal Power Commission granted the requests of the Public Service Commissions of Indiana, Wyoming and Maryland "to withdraw from any further participation in these proceedings, without prejudice to their continued participation in this proceeding if they desire to do so." (See *supra*, p. 758)

The unrealistic order issued by the Indiana Commission[16] is nevertheless relied upon by counsel for Indiana & Michigan to support their argument that the twenty-one Indiana sales made by Indiana & Michigan are subject to regulation by Indiana Commission.[17] But it is obvious that such an order assigning Indiana loads to Indiana generation cannot deprive the Federal Power Commission of jurisdiction over sales of electric energy in interstate commerce where in fact the sales will not and cannot be made from the AEP System in the manner assumed in the State Commission order. For the inescapable fact is that energy sold by Indiana & Michigan in Indiana is an indistinguishable part of electric energy emanating from multi-state sources. As already noted, the AEP System operates as a single system. It is impossible for it to operate differently without sacrificing the benefits inherent in its completely integrated operations—benefits solely accounting for the existence of the system in its advanced state of development and interconnection.

The governing statutory language and the decisions of the Supreme Court compel the conclusion that the jurisdictional status of sales depends upon the realities of electric energy flow rather than upon declarations or assumptions. In interpreting both the Natural Gas and Federal Power Acts, the Court has consistently relied upon the physical facts in determining whether sales are in interstate commerce. *Jersey Central Power & Light Co.* v. *Federal Power Commission*, 319 U.S. 61; *Interstate Natural Gas Co.* v. *Federal Power Commission*, 331 U.S. 682, 687; *Federal Power Commission* v. *East Ohio Gas Co.*, 338 U.S. 464, 467. As declared in *Connecticut Light & Power Co.* v. *Federal Power Commission*, and reiterated in *Colton*, 376 U.S. at 209 n. 5, federal jurisdiction follows the flow of energy; the test under Part II of the Act is "engineering and scientific, rather than * * * legalistic or governmental."

As the record clearly shows, Indiana & Michigan's generating facilities, together with those of its affiliates comprising the AEP System, are operated as an integrated and coordinated interstate electric system. The output of this system or pool, part of which is sold to Indiana & Michigan's customers in Indiana, is peculiarly the interstate product of the integrated system, functioning as a single multistate electric and economic unit, for the existence and nature of the product are wholly dependent upon the operation of the integrated interstate system. The product Indiana & Michigan sells to its customers is a product which would not be available but for the interstate pool which enables Indiana & Michigan to draw on out of state generation at times of need, and would not be available at the low production cost involved but for the operations of the interstate pool.

Integrated and Coordinated Operations of the AEP System

Since Indiana & Michigan's operations and facilities are an essential part of and are fully integrated with those of the total AEP System, and in view of the fact that this system is interconnected with nineteen non-affiliates, the Commission Staff necessarily offered evidence showing the integrated method of operation of the entire AEP System in order to reflect the interstate character of the twenty-four wholesale sales for resale made by Indiana & Michigan to its municipal and cooperative wholesale customers.

---

[16] Staff counsel point out in their reply brief that "Similar orders were issued by the Indiana Commission to Southern Indiana Gas & Electric Co. in cause No. 30289 on April 2, 1964, and to Public Service Company of Indiana in cause No. 30255 on February 6, 1964. Significantly, Northern Indiana Public Service Company and Indianapolis Power & Light Company, both of which are interconnected with out-of-state facilities of other companies and with [Indiana & Michigan], have filed with the FPC their rate schedules for their Wholesale sales, including sales to municipalities and cooperatives."

[17] In compliance with this order Indiana & Michigan promulgated and filed with the Indiana Commission a set of Terms and Conditions of service incorporating the provisions of the order among the standards and other requirements of its service to its Indiana municipal and cooperative customers. Since December 30, 1963, each of Indiana & Michigan's Indiana customers here in issue has been receiving electric service and paying therefor under the provisions of the Indiana Commission order and the Terms and Conditions of Service issued thereunder.

Following the incorporation of the Staff's evidence in the record, the Examiner stated his understanding of the Staff's theory by pointing out *inter alia* (Tr. 1368–1369):

> * * * [I]t is the Staff's view * * * that it is the inherent characteristics and purposes of the integrated system, not with an element or segment thereof located in one state, with which we must deal * * *.
>
> Perhaps if I borrow the words of the Supreme Court in *Southern Pacific Terminal Co.* v. *I. C. C.*, 219 U. S. 498, I can best express the staff's position as I understand it. At pages 523–524 * * * the Court states that "It is with the system that the law must deal, not with its elements. Such elements may, indeed, be regarded from some standpoints as legal entities, and may have, in a sense, separate corporate operation; but they are directed by the same paramount and combining power and made single by it."

The individual who has been and continues to be intimately associated with, and who appears to be as much responsible as any other for the development of the AEP System from an engineering and scientific standpoint, is Mr. Philip Sporn, who was recognized by the Staff's engineering witness as an authority on power systems. One of his books, published in 1950, is entitled "The Integrated Power System".[18] In this book Mr. Sporn discusses the characteristics of the integrated operation of power systems and, after doing so, relates the objectives and principles discussed in the first eight chapters to the creation, design and operation of the AEP System to the extent developed up to 1950. The testimony of the two witnesses for the Commission Staff, together with the documents they sponsor, brought the development and method of operation of the system down to date. They show the AEP System of the 1940's to be essentially the same as it is today, with improvements.

As Mr. Sporn explains, the ability to serve an entire area or region "is inherent in the concept of an integrated power-supply system. As a corollary, the system must be capable of serving any portion of the area, and all portions equally well. Thus, the development of any part of the area will not be restrained by an inadequacy of power supply. At least as far as power is concerned, all parts of an area are put on the same basis."

In exploring the bases and technical requirements of an integrated system, Mr. Sporn points out that—

> From a technical standpoint, what is meant by "integration" is this: That all facilities of the system are connected physically into or gathered within the system, and that they are made to work continuously as part of the system. The presumption is that no facility is needlessly idle; no part of the system is left hanging loose, so to speak, no part of the system is left without the resources and support of the system as a whole.
>
> Applied to energy generation, this means the ability to develop all energy resources capable of economic exploitation and the development of all the resources to their maximum, as well as the elimination of all barriers to

---

[18] The book entitled "The Integrated Power System" was received in evidence as Item KKK. It is very instructive, particularly to the uninitiated, as to the inherent characteristics of the integrated operation of a power system. Mr. Sporn concludes the preface of his book with the hope "that while the book will find interest among technical students and power-system executives and engineers, a study of it will prove rewarding to economists, investment analysts, legislators, administrators, and all those engaged in advancing the welfare of modern industrial societies."

development such as local inability to absorb the resources. Again, it means the ability to use the largest units justified by the requirements of the system for any particular station or sources, regardless of the requirements of the local area. Still further, it means the ability, as the system grows and develops, to exploit the most efficient units capable of technical projection because other units relatively recently installed but perhaps not so technically advanced can be relegated to a lesser system use. The combined or integrated effect of these is conservation on a vast scale.

As to load centers, the integrated system makes possible the integration of loads of diverse characteristics; it should make available any practical amount of power to any point on the system independent of the local resources; and, finally, it should make available multisource supply, without any appreciable economic burden, to all principal points of the system. From that follows the corollary gain: no appreciable amount of capacity need be installed—except where the advantages are large—ahead of market demand in order to utilize reasonably sized units or to avoid piecemeal development of a site. Capacity is, therefore, not kept idle pending its future use. With all load centers placed on that basis, it becomes possible to develop and conserve all the local resources and, therefore, from that angle also a major contribution to conservation is made.

From the standpoint of the power system as a whole and its operation as a technical economic entity, the integrated system makes possible the translation of skill and experience from one part of the system to the rest, permits the fullest utilization of equipment that would otherwise be retired as inadequacy or other obsolescence develops, and leads to minimum requirements in reserves of equipment, supplies, and personnel. And here, too, a contribution to conservation of resources is brought about.

* * * * * * *

The integrated power system itself is an integration of three principal components: the generating system, the transmission system, and the distribution system. These are kept in functioning order by the coordinating personnel and made effective by what has been referred to as "tools" of the integrated system: the protective elements and the regulating elements. * * *

* * * * * * *

* * * It is not imperative that the ties between generation centers be direct. It is important that the interconnected transmission be able to discharge the full technical responsibility of making possible shifts of load and transfer of power for economical loading, for unit outage and for completely coordinated operation.

* * * * * * *

* * * The distribution system might be thought as being outside the scope of the main considerations of an integrated power system, but such delimitation is only theoretical. Actually the distribution system is vitally tied to the transmission system and must be coordinated with it.

* * * * * * *

There is no question that the success of a system, no matter how well engineered and built, will be impossible without an efficient coordinating personnel fully understanding and conversant with the anatomy of the system and possessing the necessary techniques for carrying on continuously the minute-to-minute, hour-to-hour, and day-to-day control operations that are so necessary to keep the system functioning as an integrated unit.

* * * * * * *

> Past experience has amply demonstrated that properly planned and operated interconnections between integrated systems will increase the efficiency—the ability to give optimum service at lowest cost—and hence the economic soundness of each system. * * *

Chapter 9—the last chapter—of Mr. Sporn's book, is entitled "An Example Of An Integrated System—Discussion And Pointing Up Of Some Of The Principles Discussed" He introduces this chapter by stating that "there are fortunately available a considerable number of outstanding examples of integrated-system development. It should prove profitable, therefore, to examine one such system, particularly from the standpoint of how closely the principles developed in the theoretical discussion of integrated-system requirements were followed, and to see what kind of system resulted therefrom. More specifically, it should be possible to examine such a completed system and to see how well it met the social-economic objectives postulated as a basis for its existence."

As Mr. Sporn proceeds to point out—

> Since the author is most familiar with the system with which he is associated, and with whose planning, building, and operation he has been intimately connected for the past thirty years, he has taken this as an example.
>
> This is first of all, a privately owned system; it has been in successful operation for over forty years. It serves a region covering portions of seven states—Michigan, Indiana, Ohio, West Virginia, Virginia, Kentucky and Tennessee—the outside perimeter of which embraces an area of approximately 80,000 square miles. In this area, the system serves slightly over 2,000 communities * * *.

In order to develop the illustration sought, Mr. Sporn examines the AEP System from three standpoints. First, "The growth and development of the system and its ability to expand economically and to serve adequately the area requirements." Second, the "Ability to serve all the requirements of any part of the area." Third, the "Contribution to operating economies and to resource conservation." In so doing, Mr. Sporn makes it clear that the AEP System meets the objectives sought in its creation and discussed in the preceding eight chapters of his book, pointing out that the "period from 1925 to 1940 was one of intensive integration by the development and extension of the high-voltage network and the carrying forward of a program of coordinated expansion of generation facilities"; that during "this period, there was also considerable expansion of system transmission facilities and building of new interconnections with neighboring utility systems carrying with them the many advantages to be gained by interconnecting adjacent system"; that it "was also during this period that the training of personnel was carried through and the techniques and tools required for the integrated-system operation were developed"; that the "present-day integrated system functions in its highly economical and reliable manner only by virtue of the fact that planning has been forward-looking, that there has been proper basic engineering behind its building, and that the development of tools and techniques and the training of skilled personnel required to operate such a system have been carried through."

In discussing the period 1940 to 1949, Mr. Sporn calls attention to the fact that this period "was one of rapid load expansion * * * which placed extraordinary burdens on the system. This experience clearly demonstrated that the planning, design, construction, and operation of the integrated system were sound in that it was able to take on very heavy loads at practically any point on the system at a minimum of expense"; that when "it became necessary to locate additional plant sites, the integrated system was utilized in a search for other sources of generation. For example, the location of the new Sporn Plant was determined entirely by the existence of the integrated system", and that during "this period, the high-voltage network was strengthened, a notable example being the looping of the system between Ohio and Indiana by building lines from Portsmouth, Ohio, to Muncie, Indiana."

In projecting the AEP System to 1958, Mr. Sporn pointed out that "The development of the high-voltage system will enormously increase the load that can be transferred between sections of the system and the growth in load which can be served. During this period, there will be some additional strengthening of the 132,000-volt system, additional capacity will be installed at the Philip Sporn Plant, the new Tanners Creek Plant will be placed in service, and three new plant sites, the exact location of which has not been determined, will be developed. This great expansion of the system can be carried out without any major changes in, or obsolescing of, the existing system."

In discussing the growth and development of the AEP System, Mr. Sporn states:

> The growth of this system is typical of others in that, in the beginning, it comprised a few isolated operations so located that they could be economically coordinated; later, as other isolated operations were acquired, they were in turn coordinated and all were integrated to form the present system. The main growth, however, was the result of internal, i.e., intensive, rather than external, or extensive, development. Further, the development of integration was gradual over many years. Integration measures were first taken within the isolated groups, and the then nucleus of the present integrated system was started. Thereafter, growth and integration proceeded until an integrated system was developed and subsequently it was perfected and extended.
>
> * * * It is worth noting, however, that there can be no question that the growth shown and projected clearly demonstrates the ability of combining gradual or evolutionary development with farsighted planning, so as to bring a power supply to the integrated area large enough to serve all its requirements. Such, as a matter of fact, has been the experience within the area served by this integrated system.

And concerning the ability of the AEP System to serve all the requirements of any part of the seven-state area, Mr. Sporn states in part:

> The basic principles followed in the planning and building of this integrated system, and the many studies made of different parts of the system and of the system as a whole during the years, all gave reason for the conviction that a practically unlimited supply of electric power could be furnished to almost any community on the system.
>
> * * * * * * *
>
> A recent review of this study showed that, since the study was first made in 1939, the load in a great many of these communities has doubled, in quite a number of cases it has tripled, and in one case it has increased almost five times. But the conclusions reached prior to and confirmed in 1939 are still valid: a very large block of power could be economically served to any of these communities.
>
> The ability of the integrated system, well planned and efficiently operated to furnish a supply of electric power in almost any practical amount to every community throughout the area covered by it, would seem to constitute an asset of major proportions from the standpoint of the broad social and economic welfare of the area and the country.

A recent brochure published by the AEP System summarizes facts and facilities pertinent to the decision in this case, with which summary the testimony of the Commission's engineering witness is in agreement (Exhibit 42, pp. 1, 19–20):

> The AEP System is a group of six investor-owned electric utilities, each interconnected with the others by high-voltage transmission lines, permitting their operations to be fully integrated *and thus forming a single major power system.* All told, the AEP System [which has available for its customers' use more than 8,000,000 kilowatts of electric power generating capability] provides unexcelled electric service to more than 5,400,000 people and 2,370 communities in a 48,600-square-mile area covering parts of seven East-Central states * * *. [Italics supplied]
>
> To provide this service, the AEP System has built a giant chain of power plants—large, modern and efficient—and is constantly adding new, bigger and better plants to this chain. Annually these plants produce more electricity than those of any other private power system in the world. Each of the plants, in its own way and in its own time, was an engineering achievement, and a number of them are world renowned for their advanced technology.
>
> * * * * * * *
>
> All of the plants and the companies' customer load centers are tied together by a network of some 14,000 circuit miles of transmission lines, extending from Lake Michigan to the border of North Carolina and including more than 1,500 circuit miles of 345,000-volt lines—the highest voltage in general use in the United States. *Each plant thus supports, and in turn is supported by, the others.* Furthermore, the AEP System is interconnected with 19 other electric power systems at 66 locations, including 39 major high voltage interconnections. [Italics supplied]
>
> Three main dispatching points—at Canton, Ohio; Roanoke, Va., and Fort Wayne, Ind.—working closely with a central AEP System coordinating group located in Columbus, Ohio, direct the generation and flow of power throughout this seven-state network, as well as the interchange of power with other systems, to assure maximum use of facilities and maximum economy.
>
> * * * * * * *
>
> The AEP System through the years has maintained a reputation for outstanding performance in this field. For example, during nine years of a recent 11-year period, an AEP-designed power plant was the nation's—and thus the world's—most efficient steam-electric station. * * *
>
> Setting the pace in power generating efficiency, an AEP System plant (Philip Sporn) in 1950 became one of the first two in the world to generate power at a heat rate below 10,000 Btu per kwh. Exactly 10 years later, another AEP plant (Clinch River) in 1960 was the first to operate at a heat rate below 9,000 Btu. And in the years since then, even this record has been bettered.
>
> All of this didn't just happen. It was brought about by dedicated exploration of every promising technological avenue leading to more economical electric energy. Many concepts developed by our pioneering have become standard in the design of most major power plants. * * *
>
> * * * * * * *
>
> A major factor in the cost of electricity is the cost of fuel and its transportation to the power plant. The AEP System uses more coal than any other investor-owned power system—some 16,000,000 tons a year by 1964, for example. In order to keep costs to a minimum, all except one of the AEP System's plants are located in close proximity to fuel sources and

> several are virtually minemouth plants. Highly efficient transmission facilities, including a System-wide backbone network of 345,000-volt lines (pioneered by the AEP System after extensive testing of lines up to 500,000 volts during the period 1946–51), bring power economically from these plants to the various load centers.
>
> * * * * * * *
>
> But progress will not stop here. The AEP System today is carrying out extensive research and development work in several fields, none more significant than power generation—always seeking improvements in the art and, in turn, lower-cost electric power for its customers.

On the AEP System, as on all integrated power systems, all loads are supplied from total system generation (plus energy received over interconnections) which always matches total system load, including scheduled loads on interconnection ties. It is in this manner that the AEP System functions as a single unit, making it impossible to determine which source of energy supplies a particular load. The electric energy, generated as needed and delivered instantaneously—at the speed of light, is supplied in the form of either 120 pulsations or 120 positive plus 120 negative pulsations per second per phase for the 60 cycle system.

All operating electric generators on the network are interlocked electromagnetically. Accordingly, under ordinary operating conditions, they run either at exactly the same speed or at a speed ratio such as 1800 or 3600 revolutions per minute. No operating generator changes its speed itself. All the generators connected to the network must follow each other as to speed whenever there is a change in speed, and the frequency of all interlocked generators is always exactly the same. Every change in load on the system affects every generating unit connected to the network.

As already made clear, the six operating electric companies comprising the AEP System, "with their power plants and transmission lines interconnected and their operations completely integrated, operate as a single major electric system." "A major factor in this integrated operation is the American Electric Power Service Corporation, another subsidiary which provides management and technical service for the AEP System, with one of the most important services being the principal design and engineering work required by all System companies." "The AEP Service Corporation * * * employees provide research, planning, engineering, design, and construction services needed by the operating companies, together with commercial, financing, accounting, legal and other operating services." [19]

An important function of the Service Corporation is to economically load the generating facilities throughout the seven-State area served by the AEP System. This function is performed through the Columbus, Ohio dispatching center by skilled power coordinators who also operate the load frequency control facilities to maintain continuous parallel operation with interconnected non-affiliated systems.

The scheduling or production of electric energy from Indiana & Michigan's generators is carried out by the Columbus dispatching office on the basis of relative costs, including transmission losses, of electric energy available from all AEP System generating sources for serving the total system load.

Every day of the year there are transfers of energy to and from Indiana & Michigan across the Indiana-Ohio and Indiana-Illinois borders. Indiana &

---

[19] The quoted excerpts are from a brochure entitled "Indiana & Michigan Electric Co. and the American Electric Power System" (Exhibit 47). They accord with the testimony of Staff witnesses.

Michigan also transmits electric energy daily across the Michigan-Indiana border.[20]

Facilities Used by Indiana & Michigan In Making Sales to Its Municipal and Cooperative Customers

The broad purpose of Part II of the Act is to bring about effective regulation of interstate wholesale sales of electric energy for resale. This clear and specific grant of jurisdiction cannot be nullified by any other provision of the Act which might at first blush seem inconsistent therewith (*Colton*, 376 U.S. at 215; *Connecticut Light & Power Co.* v. *Federal Power Commission*, 324 U.S. at 527).

In an effort to avoid the purpose of the Act to regulate interstate sales for resale, counsel for Indiana & Michigan contend that nineteen of the twenty-four sales in issue are made from facilities used in local distribution; as such are expressly excluded from the Commission's jurisdiction by the "but" clause of Section 201(b); [21] and, hence, the nineteen sales made from those facilities are exempt from Commission jurisdiction. That is to say, counsel seek an interpretation of the Act which will enable the company to continue interstate wholesale sales for resale without becoming subject to regulation under the Act.[22]

The position of counsel for Indiana & Michigan is untenable. In the first place, nothing in the Act makes Commission jurisdiction under Part II over sales of electric energy dependent upon the nature of the facilities involved in effecting sales. "Sale of electric energy at wholesale" is defined only as "a sale of electric energy to any person for resale" (Section 201(d)). Under the statute the nature of facilities applies only to the determination of the status of an electric company as a "public utility" under Part II. That term is defined in Section 201(e) as "any person who owns or operates facilities subject to the jurisdiction of the Commission under this part," which facilities are, in turn, defined in Section 201(b) as excluding "facilities used in *local* distribution".

---

[20] Indiana & Michigan's facilities are interconnected directly with a number of non-affiliated systems: Public Service Company of Indiana, Inc., Northern Indiana Public Service Company, Indiana-Kentucky Electric Corporation, and Indianapolis Power & Light Company, all operating in Indiana; The Cincinnati Gas & Electric Company in Ohio, Commonwealth Edison Company in Illinois, Michigan Gas & Electric Company in Michigan, and Illinois Power Company in Illinois—and through it to the Illinois-Missouri Power Pool. Indiana & Michigan is also interconnected with its affiliate, Ohio Power Company, at a number of points on the Indiana-Ohio border.

The agreements entered into between Indiana & Michigan and its non-affiliates recognize the free flow of energy from one system to the other because of the characteristics and operations of the network.

[21] Section 201(b) defines the coverage of Part II of the Act and the scope of the Commission's jurisdiction thereunder. It first provides that Part II "shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce." It then commits to the Commission jurisdiction over "all facilities for such transmission or sale," but not, except as specifically provided in Parts II and III, "facilities used for the generation of electric energy or * * * used in local distribution or only for the transmission * * * in intrastate commerce, or * * * for the transmission of electric energy consumed wholly by the transmitter."

[22] The further contention of counsel for Indiana & Michigan that by Section 201(a) of the Act Congress intended Indiana & Michigan's Indiana sales to be subject to state regulation is without merit. As the Supreme Court stated in *Colton*, 376 U.S. at 215–216, "We reiterated this view in *United States* v. *Public Utilities Commission, supra*, 345 U.S. at 311, where we also said, "to conceive of it [§ 201(a)] now as a bench mark of the Commission's power, or an affirmation of state authority over any interstate sales for resale, would be to speculate about a congressional purpose for which there is no support."

Under no circumstances may the Commission permit itself to become trapped in a situation where interstate wholesale sales for resale will not be regulated.

Furthermore, as made clear in *Hartford Electric Light Co.* v. *Federal Power Commission*, 131 F. 2d 953, cert. den. 319 U.S. 741, the "but" clause in Section 201(b) only exempts the non-interstate facilities grouped therein (generating facilities and facilities used in local distribution or for intrastate transmission) when not used for interstate purposes such as wholesale sales for resale.

Even if it be assumed, *arguendo*, that the nature of the facilities is relevant as indicating whether the sales are in interstate commerce, the fact is that the facilities used by Indiana & Michigan in making sales to its municipal and cooperative customers are not facilities used in *local* distribution.

The facilities used by Indiana & Michigan in making sales for resale to its municipal and cooperative customers include, of course, more than the facilities located immediately adjacent to the points of delivery to those customers. The facilities would include all the generating stations, the high voltage transmission grid, the subtransmission facilities, and all other equipment which is necessary for the system to operate and the sales to be made. The facilities also include the "corporate organization, contracts, accounts, memoranda, papers and other records, insofar as they are utilized in connection with such sales" (131 F. 2d at 961). The intervening apparatus between the generators and the points of delivery are the means by which the electric energy is delivered to the purchasers, and the business facilities the means by which the practical commercial aspects of the transactions are effected.

It should also be pointed out that the interposition of transformers and other equipment does not affect the Commission's jurisdiction over interstate wholesale sales for resale (*Wisconsin Michigan Power Co.* v. *Federal Power Commission, supra*, 197 F. 2d at 477–478; *Hartford Electric Light Co.* v. *Federal Power Commission, supra*, 131 F. 2d at 960). Moreover, the fact that some of the facilities used to serve the nineteen customers are also used to serve large industrial and other customers at retail does not exempt facilities used for dual purposes (*Colton*, 376 U.S. at 210 n. 6). In view of the state of the art, facilities simply cannot be rigidly divided between "transmission" and "distribution".

There is obviously a transmission function involved in the bulk transfer of energy even where the transmission facilities are also used to effect distribution at retail, the bulk transfer being for delivery to a point for subsequent *local* distribution in the retail market. Pertinent here is the decision in *Wisconsin Michigan Power Co.* v. *Federal Power Commission, supra:*

> As we have seen, it was the intent of the Congress to place in the Federal Commission, jurisdiction which never belonged to the states, that is, sales from interstate commerce to wholesalers for resale. The question is essentially, when does interstate commerce transportation end and where do the local distribution facilities first become operative. * * * Thus the interstate transmission of electric energy continues from Michigan through the transformers in reduced voltage of the wholesaler; upon delivery to him local distribution begins when he resells. His sales and distribution at retail are clearly local in character, and constitute only local distribution, but at no point before delivery to him has been completed, has interstate transmission terminated. In other words, "facilities used in local distribution" means facilities used for making resale and distribution to consumers, jurisdiction over which is left to the states. It was only because of this conclusion that the Supreme Court said in *Panhandle Eastern Pipe Line Co.* v. *P. S. C. of Indiana*, 332 U.S. 507, 517 * * * the Act "cut(s) sharply and clearly between sales for resale and direct sales for consumptive uses." We think there is no ground for the position that local distribution includes any transmission occurring before the wholesaler who resells at retail is reached. *F.P.C.* v. *East Ohio Gas Co.*, 338 U.S. 464 * * *. (197 F. 2d at 477)

Therefore, as the Staff engineering witness testified, the electric facilities used to supply electric energy for resale to the municipal and cooperative electric systems "are transmission facilities since they supply bulk energy for further transmission by the wholesale purchasers"; that "by my definition of transmission" there is no situation in which he would regard delivery to a wholesale customer as constituting distribution rather than transmission of electric energy.

The Staff engineer's definition is manifestly correct for no definition of transmission can ignore the purpose of the Act to regulate wholesale sales for resale in interstate commerce. Accordingly, the facilities used by Indiana & Michigan to serve its municipal and cooperative customers, described in detail by its engineering witness (Tr. 1231–62), are not facilities used in local distribution within the meaning of the Act. While counsel for Indiana & Michigan prefer to rely upon the conclusions of its expert engineering witness, it need only be stated in this connection that, as held in *Central Illinois Public Service Company* v. *Federal Power Commission*, 338 F. 2d 682, 7 Cir., Nos. 14454 and 14628, decided November 3, 1964, "the Commission is not required to depend on conclusions of expert witnesses in deciding technical matters within the Commission's area of expertise, and may make such determinations from the evidence in the record. *Market Street Railway Co.* v. *Railroad Commission of California*, 324 U.S. 548; *Spitzer* v. *Commissioner of Internal Revenue*, 8 Cir., 153 F. 2d 967, 972." In the cited *Market Street* case the Supreme Court had made it clear that an expert's judgment does not bind a regulatory commission, stating (324 U.S. at 560):

> * * * Experts' judgments, however, would not bind the Commission. Their testimony would be in the nature of argument or opinion, and the weight to be given it would depend upon the Commission's estimate of the reasonableness of their conclusions and the force of their reasoning. * * *

In view of the matters placed under Commission administration, with consequent Commission responsibilities, any current definition of facilities which prevents the Commission from performing its tasks consistently with the purposes of the Act must be rejected. No such definition may be permitted to open the door to ready evasion of the Commission's jurisdiction over wholesale sales for resale in interstate commerce.

The Peoples Case

Relying upon the doctrine of *Peoples Natural Gas Co.* v. *Public Service Commission*, 270 U.S. 550,[23] counsel for Indiana & Michigan claim that the company's twenty-one Indiana sales are intrastate commerce and therefore not subject to regulation under Part II of the Act.[24] While their reliance upon

---

[23] *Peoples* was concerned with a local problem, namely, a proposed abandonment of natural gas service to a distribution company in Johnstown, Pennsylvania, the state's regulation of which neither burdened interstate commerce nor prejudiced any other state.

The Pennsylvania Commission's order upheld by the Supreme Court required the Peoples Company to continue supplying natural gas to a company distributing gas in Johnstown. The order had proceeded on the theory that the Peoples Company could be required, irrespective of contract terms, to continue supplying gas to the local company.

In another case decided three years later, also involving a State order compelling continuation of gas service in conjunction with a demand which the supplier had created, the Supreme Court held that a public service company may not "pick and choose" its customers, leaving others "to get along without the service which it alone is in a position to give." *United Fuel Gas Co.* v. *Railroad Commission of Kentucky*, 287 U.S. 300, 309 (1929).

[24] The argument here is limited to the twenty-one Indiana sales. Counsel do not appear to challenge the fact that the three sales made by Indiana & Michigan in the State of Michigan are subject to the Federal Power Commission's jurisdiction.

Peoples is clearly misplaced, such reliance stems from the contention that "there is more than enough generation in Indiana to cover all of [Indiana & Michigan's] sales to its municipal and cooperative customers in Indiana."

In connection with *Peoples* it should first be observed that natural gas can be captured, compressed and stored. Electric energy, on the other hand, cannot be feasibly stored or produced before the instant it is used. It can be so produced and used because it is delivered to points of need at the speed of light, or about 186,000 miles per second. Thus captured gas moving slowly through pipelines has different characteristics than instantaneous transfers of energy from electromagnetically interlocked generators via a multi-state transmission grid to various and varying multi-state loads. In the Examiner's view, the Power and Natural Gas Acts are not susceptible of analogous interpretation in this regard (See *Amerada Petroleum Corp.* v. *Federal Power Commission*, 334 F. 2d 404, 409 n. 4).

Counsel for Indiana & Michigan, in leaning heavily on *Peoples*, ignore the integrated nature and characteristics of the operations of the AEP System, no part of which is left without the resources and support of the system as a whole. As the evidence makes clear, whatever the available Indiana generation and the capability of Indiana & Michigan,[25] it is not used solely to supply Indiana loads. It supplies out-of-state loads as well. Likewise, out-of-state generation is used in part to meet Indiana loads. Transfers of energy into and out of Indiana occur moment to moment because of the characteristics of the system and the constantly changing network loads. Frequently, the total of the Indiana loads exceed the available Indiana generation, the energy deficiency being made up of out-of-state energy flowing into Indiana.

Not only is the *Peoples* decision clearly inapplicable to Indiana & Michigan's integrated operations,[26] which are controlled by *Penn Water*, but *Peoples* assumed a breadth of State regulatory power inconsistent with *Public Utilities Commission* v. *Attleboro Steam & Electric Co.*, 273 U.S. 83, herein referred to as the *Attleboro* case, decided in 1927, or one year after *Peoples*. It was on the authority of the *Attleboro* line of cases that Congress provided the comprehensive regulation embodied in Part II of the Act.

Peoples was decided at a time when there was no full appreciation of the limits of State power over sales at wholesale for resale, for it was not until the following year in *Attleboro* that the jurisdictional lines between local and national authority were determined, and it was not until *Penn Water*—after passage of Part II of the Act by Congress—that the Supreme Court had an opportunity to determine the scope of federal power which Congress had asserted with reference to pool sales of electric energy. As stated in *Colton*, 376 U.S. at 314:

> * * * What Congress did [in Part II of the Federal Power Act] was to adopt the test developed in the *Attleboro* line which denied state power to regulate a sale "at wholesale to local distributing companies" and allowed state regulation of a sale at "local retail rates to ultimate consumers."

---

[25] Counsel for Indiana & Michigan point out in their brief that "witness McDaniel testified and sponsored exhibits which proved that for each hour of each month from January 1, 1962, through April 30, 1964 [Indiana & Michigan] had available to it Indiana steam generation more than adequate to serve, and to cover any losses involved in serving, the maximum possible demands of all of the Indiana municipalities and cooperatives it serves. * * * He further testified that it is his opinion, unchallenged by Staff, that [Indiana & Michigan's] facilities are physically capable of furnishing [Indiana & Michigan's] Indiana municipal and cooperative customers with [Indiana & Michigan's] Indiana steam generation during each hour of that period * * *."

[26] *Lone Star Gas Co.* v. *Texas*, 304 U.S. 224, cited by counsel for Indiana & Michigan, is also readily distinguishable.

Peoples can now only be read having in mind the situation there presented and the nature of the order approved—which had no impact upon the national interest in commerce; the fact that it was not until a year after *Peoples* that the Supreme Court in *Attleboro* drew the bright and easily ascertainable line between State and Federal jurisdiction;[27] and the absence of conflicting Federal legislation.[28]

The *Peoples* decision upholding the State Commission order there involved was based on the fact that there was more than enough Pennsylvania-produced gas in the mixture flowing in the pipeline in Pennsylvania from which the City was supplied to meet all of the City's requirements.[29] That natural gas pipeline was located entirely in Pennsylvania and served only customers in that State. Indiana & Michigan, on the other hand, operates in both Indiana and Michigan, and its facilities and operations are an integral part of a seven-state integrated system. On that system large-scale, properly located generation, tied together by high-voltage transmission, is the foundation for an adequate and economical power supply for the entire area served. Such an integrated operation constitutes a break with the past type of limited operation, resulting in federal rate authority applying to all wholesale sales for resale made from the integrated system, despite the fact that the electric energy sold is made up of power transmitted across state lines as well as that produced locally. It was so held in *Penn Water*, 343 U.S. at 420, and as further pointed out in this connection in *United States* v. *Public Utilities Commission of California*, *supra*, "The impossibility of separating interstate from intrastate electricity consumed by each purchaser is patent. In such a case, federal rate jurisdiction must attach to each distributor's negotiated agreement with the seller" (345 U.S. at 317).

The Peoples Company purchased two-thirds of its gas requirements from a producing company at the Pennsylvania-West Virginia border. It produced the other one-third from its own wells in Pennsylvania. The gas from both sources became commingled in Pennsylvania by being fed into the same pipeline. However, unlike Indiana & Michigan's method of integrated and coordinated operation, none of the commingled gas left Pennsylvania. In these circumstances, and "As respects to *Peoples* gas", the Supreme Court ruled that such gas "must be held to be in intrastate commerce only", observing in this regard that (270 U.S. at pp. 554–555)—

---

[27] As stated in *Colton*, *supra*, 376 U.S. at 215–216:

> * * * Congress meant to draw a bright line easily ascertained, between state and federal jurisdiction * * *. This was done in the Power Act by making FPC jurisdiction plenary and extending it to all wholesale sales in interstate commerce except those which Congress had made explicitly subject to regulation by States. There is no such exception covering the Edison-Colton sale.

[28] It should be noted that the *Peoples* case was decided prior to federal occupancy of the field. Under the Natural Gas Act as originally enacted in 1938, all of *Peoples* sales for resale would have been subject to Federal Power Commission jurisdiction. After 1954 all the sales would have been subject to state commission jurisdiction under the Hinshaw amendment.

As pointed out in *Colton*, *supra*, 376 U.S. at 201, n. 9: "In 1954 Congress amended the jurisdictional provision of the Natural Gas Act to exempt persons receiving natural gas within a State and transmitting or selling it for consumption solely within the same State. 68 Stat. 36, 15 U.S.C. § 717(c). A proposal which would have similarly limited FPC jurisdiction in the electric power field died in Committee. See Hearings before House Subcommittee of the Committee on Interstate and Foreign Commerce on H.R. 2972 and 2973 80th Cong., 1st Sess."

[29] It does not appear from *Peoples* that there would be any reason for denying similar effect to the Commission order approved if the Commission had been a Federal instead of a State Commission. Furthermore, the opinion did not decide how many, if any, other sales from the pipeline could be regulated by the State Commission on the same theory.

As already indicated, in *Peoples* the Court had no occasion to consider the question of pool sales presented in *Penn Water* and the instant proceeding. Moreover, the language of the *Peoples* decision is to be read in the context of the limited abandonment issue actually before the Court. In short, the considerations which give force for Federal jurisdiction in the present case were absent in *Peoples*.

> * * * the proportions of both in the mixture are known and that of either readily may be withdrawn without affecting the transportation or the sale of the rest. So for all practical purposes the two are separable, and neither affects the character of the business as to the other. * * *

The same, however, is not true of the electric energy produced by Indiana & Michigan which is automatically a part of a completely integrated and coordinated seven-state electric system of which Indiana & Michigan is an integral part and in which system energy crossing state boundaries, with other system energy, is used to fulfill system requirements—an operation wholly national in character which can only be reached, insofar as wholesales for resale are concerned, by the exercise of power vested in Congress. As held in *Penn Water*, where these circumstances exist, "the Federal Power Commission has complete authority to regulate all of this commingled power flow." The reasoning underlying this case is directly applicable here and disposes of the argument of counsel for Indiana & Michigan.

It is noteworthy that no case considered by the Supreme Court prior to the passage of Part II of the Federal Power Act involved pool sales of electric energy made without reference to the state of origin of the energy. But in *Penn Water* the Court was required to determine the scope of federal power which Congress had asserted in Part II of the Act. As stated above, it did so by ruling that federal rate authority applies to all wholesales for resale made from the integrated system. In a different type of case, *Railroad Commission of Wisconsin* v. *Chicago, B. & Q.R.R. Co.*, 257 U.S. 563, 588, cited in *Wisconsin Michigan Power Co.* v. *Federal Power Commission*, 197 F. 2d 472, 478, cert. den., 345 U.S. 934, the Supreme Court had previously stated: "Commerce is a unit and does not regard state lines, and while under the Constitution, interstate and intrastate commerce are ordinarily subject to regulation by different sovereignties, yet when they are so mingled together that the Supreme authority, the Nation, cannot exercise complete effective control over interstate commerce without incidental regulation of intrastate commerce, such incidental regulation is not an invasion of state authority or a violation of the proviso."

Procedure Followed by the Commission Staff in Conducting its Investigation

Under normal procedure the Staff carries out a thorough field investigation pursuant to a general order of investigation issued by the Commission and is able to complete such investigation prior to the initial session of the hearing. Such procedure enables the Staff to prepare its case-in-chief and present it at the initial session or serve it by mail prior thereto. But in this proceeding the Staff followed a different procedure in which they, without the benefit of a general order of investigation, completed their investigation through the hearing process (Tr. 401) by means of subpoenas issued by the Commission and by the Examiner in compliance with the orders of the Commission.

While the procedure followed by the Staff is not violative of due process, it is cumbersome and time consuming. It prompted the Examiner to express concern at the third session of the hearing "about the way this case is being stretched out" (Tr. 206), and to state at the sixth session of the hearing (Tr. 616–617):

> Although the Commission, in the exercise of its authority under Section 301 of the Act, could have overcome the resistance of Indiana & Michigan * * * and its affiliates by compelling them to give members of its Staff free access to the information they possess, the Commission, instead, in

> its order issued July 23, 1963, resorted to the subpoena process. I assume that in taking this limited course of action it believed that adequate data could be obtained by this means, making the usual general and complete investigation in the field unnecessary.
>
> Resort to the subpoena appears to have resulted in companies and the individuals involved supplying only the data called for in the subpoena, which is all they were required to do, with the Staff at no time having had full and free access to the information they are empowered by the Act upon order of the Commission to review.
>
> By being denied full access to their normal right to inspect and examine all data and to obtain copies where necessary, the Commission Staff, in requesting the issuance of subpoenas, has in some instances subpoenaed files and data which upon production and examination were found to contain certain data not necessary for the Staff's factual presentation in this case, and that some additional data for certain dates, etc., not covered by the subpoena would be necessary.
>
> The discovery of additional leads led to requests for additional subpoenas issued by the Commission and the Examiner. In issuing subpoenas in this proceeding, both the Commission and the Examiner have in each instance, and as required by Section 307(b) of the Act, determined that good ground exists for believing that the data requested by the Staff is relevant and material to the issues raised in this proceeding. However, as to several of the requests made by Staff Counsel the Examiner was unable to make the required finding of relevancy and materiality on the basis of the representations made by Staff Counsel, his representations being based upon limited knowledge in many instances.
>
> Being unable to make the required finding for the purpose of issuing a subpoena, the Examiner denied the requested subpoenas in certain instances. * * *
>
> * * * * * * *
>
> * * * It is obvious from the explicit character of the Commission's order [issued October 4, 1963, 30 FPC 967 at 969, Tr. 493–505] that it intends that "The Presiding Examiner shall issue all subpoenas or orders as are necessary to enable the Staff to make a thorough and complete investigation and obtain all necessary data." [See Tr. 494]
>
> From the day this hearing started it has seemed that the effort of the Staff to obtain evidence a little bit at a time through the route of the issuance of subpoenas and subpoenas duces tecum has slowed down the * * * disposition of the jurisdictional issues in this case to a walk. This apparently was fully understood by the Commission when it issued its order of October 4, 1963. For example, the emphasis upon the plenary authority of the Commission together with the statement that the Commission and the Examiner possess "all necessary authority to compel the production" of all necessary evidence "by order or ruling" indicates clearly to me that the Commission has authorized me to exercise on its behalf the plenary authority which the Commission possesses.

The procedure followed by the Staff in this proceeding is one which the Examiner could not commend for the reasons already indicated and for the further reason that it provided counsel for Indiana & Michigan with the opportunity, of which they took advantage, to give color to their unjustified contention that, insofar as prehearing discovery is concerned, the "Examiner and the Commission have evidenced an apparent bias in favor of the Staff." Their argument is that Indiana & Michigan had discovery rights equal to that of the Staff; that the granting of some of the discovery sought by the Staff and the denial of the type of discovery sought by counsel for the company deprived the company of procedures prescribed by law and that the company has thereby been denied due process of law.

Congress was aware of the fact that the Commission must have a proper starting point by being given access to the evidence upon which its decisions must be based. It therefore provided the Commission with plenary authority to obtain such evidence. This, of course, is where good regulatory action begins, for without such authority regulation could become paralyzed through a company's simple denial of the needed information.

While it cannot be denied that Indiana & Michigan is entitled to a reasonable opportunity to know the proposals of the Staff and meet them,[30] it is impossible for Indiana & Michigan or anyone else to know and to meet the Staff's proposals until the Staff itself is given access to the necessary evidence and formulates its proposals based thereon. As the record shows, the Examiner, at the first session of the preliminary hearing held July 29, 1963, inquired as to Staff's position and was advised that it had not been formulated (Tr. 66):

> Presiding Examiner: * * * Now let me ask staff counsel: Do you know what your final position in this case is going to be?
>
> [Staff Counsel]: No, sir. * * *
>
> Presiding Examiner: Why don't you know that?
>
> [Staff Counsel]: We have not had access to the data. We were trying to get the engineering data to work up a case. How can we present anything when the company has within its possession all of the engineering and other data which the staff sought access to to formulate its case, assuming it presents one?

And at the second session of the hearing Staff counsel stated that he was asking the Examiner to "direct these corporate affiliates of Indiana & Michigan to make available the facts within their knowledge from which we can develop a case to determine the public utility status of Indiana & Michigan; that is all" (Tr. 146). At the next session of the hearing held October 8, 1963, Staff counsel stated (Tr. 416):

> * * * Sir, I don't want to try my theory of the case when I am not sure exactly what it is going to be because I don't have the data yet before me and I am not prepared at this time. I think, however, that an understanding of the whole system will be necessary to understand this jurisdictional question here. * * *

He further pointed out that "You make your theories as you get your data. You don't start out on a theory and try to document it without facts" (Tr. 425).

The Examiner, being unaware of even the Staff's theory of this case during the first six preliminary sessions of the hearing, was in no position to exercise a reliable judgment of the relevance of the discovery sought by counsel for Indiana & Michigan to the issues which had not then been formulated. Furthermore, the Examiner was controlled by orders of the Commission which had denied some of the same discovery requests. The Commission sustained the Examiner's rulings with respect to others (Tr. 701–702).

---

[30] As the Supreme Court noted in *Morgan* v. *United States*, 304 U.S. 1, 18–19:

> * * * The right to a hearing embraces not only the right to present evidence but also a reasonable opportunity to know the claims of the opposing party and to meet them. The right to submit argument implies that opportunity; otherwise the right may be a barren one. Those who are brought into contest with the Government in a quasi-judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the Government proposes and to be heard upon its proposals before it issues its final command.

Definition of issues and control of discovery are, of course, closely interrelated and, if confusion and possible fishing expeditions are to be avoided, must be coordinated. Prehearing discovery is therefore not available merely for the asking. The discovery sought must not only be shown to be relevant and material to the issues and useful for defensive purposes, but it must also be shown that there is a need for eliciting the information by discovery procedures rather than by testimony at the hearing. As already indicated, it was impossible for counsel for Indiana & Michigan to make a convincing showing in this regard during the first six sessions of the hearing at which no evidence was offered.

The hearing in this proceeding was not a continuous court-type hearing necessitating prehearing discovery. Rather the hearing was conducted at intervals with breaks to (1) prepare and serve the direct evidence; (2) prepare for cross-examination after service of the direct cases; (3) prepare and serve rebuttal evidence; and (4) prepare for cross-examination on the rebuttal evidence. Thus adequate opportunity to defend without prehearing discovery was available to counsel for Indiana & Michigan. As has been pointed out by a former General Counsel and Chairman of the Federal Trade Commission, in discussing adjudicative hearings before that agency which are now continuous, court-type:

> * * * Interval hearings provided an opportunity for respondents to balance the investigatory power of the Commission. Elimination of interval hearings, in a sense, removes certain rights of respondent, which are reinstated through allowance of discovery. * * *[n]

It was in the light of the Examiner's knowledge in this connection that, in acting upon Indiana & Michigan's motions filed December 28, 1963 and March 2, 1963, the Examiner ruled (Tr. 1158–1166):

> * * * [T]he Staff recommended denial of the application [of December 28, 1963] * * * and also took the position that since the Examiner had directed the Staff to file a revised direct case, the basis for the application had disappeared. By a motion filed March 2, 1963, Indiana & Michigan states that in view of the similarity of the Staff's revised case filed February 4, 1964, with the original direct testimony filed November 4, 1963, "We hereby republish that application and request a ruling thereon prior to March 10, 1964." * * *
>
> * * * * * * *
>
> In the Examiner's view, Indiana & Michigan's application, to a considerable extent, goes beyond the latitude of scope of discovery which should be permitted any respondent. Moreover, the Commission made it clear that the facts in this case will not be based upon what is in the Commission's files, or what may or may not have been in the minds of Staff members at one time or another, but upon what is placed within the four corners of the record made.
>
> While counsel for Indiana & Michigan attempt to convey the impression that extensive discovery is required before cross-examination begins, it is clear to the Examiner that adequate opportunity to defend is available without the discovery sought. The hearing is being conducted at intervals * * *. While the Commission in pipeline cases, for example, has recently established a procedure for continuous, court-type hearings, involving only brief recesses of the type involved in court litigation, and in which the use of the principle of discovery may to some extent become

---

[n] Kintner, Discovery in Administrative Adjudicative Proceedings, 16 Adm. L. Rev. 233–42 (1964); "The Forum", December 1963, Published by the District of Columbia Chapter of the Federal Bar Association.

necessary, the hearing in the instant proceeding, by ruling of the Examiner, is not of that type. The hearing procedure being followed diminishes, if it does not avoid altogether, the necessity for the discovery sought.

Discovery is allowed when indispensable, relevant to the issues, necessary for defense, and when it cannot be elicited by testimony at the hearing. Counsel should not be permitted to do by subpoena what should and can properly be accomplished at the hearing. They will have ample opportunity to test the statements of the two Staff witnesses on cross-examination, and it is to be expected that such witnesses will make full disclosure, it being their duty, upon appropriate inquiry, to cover any point omitted, or insufficiently explained in their prepared direct testimony. The Examiner has no reason to anticipate that such witnesses will seek refuge in undisclosed sources of information. However, should it appear during cross-examination that there is a need for discovery by means other than testimony, the Examiner will direct the Staff witnesses, or their counsel, to produce and permit the inspection and copying of non-privileged documents or other physical evidence which constitute or contain evidence relevant to the issues to be decided, and which are in the possession, custody or control of the Commission Staff. The Examiner will not, of course, grant discovery to gratify curiosity, to engage in a fishing expedition, to enable any undue inquisition into the internal affairs of the Commission's operations, or to permit prying into the official performance of the Commission's duties.

For the reasons hereinabove set forth, Indiana & Michigan has not shown a necessity for discovery by means other than testimony at the hearing. It may, however, have whatever discovery is necessary when need therefor is shown. In no prior hearing in which the Examiner has presided has there ever been an occasion to grant discovery of the type sought by Indiana & Michigan, nor has discovery of this or any other type even been sought.[32]

While Indiana & Michigan also renews its motions for discovery previously made on July 29, October 8 and October 18, 1963, which were denied by the Examiner, the Examiner sees no reason to change, or expand upon, those rulings at this time.

It will also be helpful to point out that, in the Examiner's view, parties to a Commission proceeding may not properly inquire into the official performance of the Commission's duties, as counsel for Indiana & Michigan sought to do (see *supra*, p. 760, n. 11); allegations in the Commission's Show Cause Order do not have the characteristics of evidence (see *supra*, p. 760, n. 12); the Commission had ruled that its members "may not be examined either by deposition or at the hearing" (Tr. 14); that prior regulation of Indiana & Michigan's activities by the Public Service Commissions of Indiana and Michigan was of no significance insofar as the jurisdictional issue is concerned (see *supra*, pp. 757–758); and that material relating to the internal operation of a government agency, including intra-agency conversations and reports of investigation reflecting research and analysis preliminary to official action, are not the proper subject of disclosure in a Commission proceeding (*Appeal of United States Securities & Exchange Commission*, 226 F. 2d 501, 519; *North American Airlines* v. *Civil Aeronautics Board*, 240 F. 2d 867).

On July 23, 1963, the Commission denied the applications in which Indiana & Michigan applied to take testimony by deposition and for the issuance of subpoenas *ad testificandum* and *duces tecum* (Tr. 13–16). On the same day the Commission, acting on its own motion, found it necessary to issue an order

---

[32] See also statements of the Examiner at pages 50–51, 147, 208–209, 217, 295 of the transcript.

(Tr. 16–22) directing its Secretary to issue a subpoena *duces tecum* directed to American Electric Power Company, Inc., and affiliates, and the President of each of the corporations. As the Commission stated, its—

> * * * review of communications between its staff and counsel for Indiana & Michigan indicates that certain data requested by the staff in preparation for the forthcoming hearing in this matter will not be made available without an order of this Commission.

In issuing its order the Commission recognized that it might be necessary, as it was, to issue additional orders for the same purposes. Thus it ruled (Tr. 22):

> (D) This order is without prejudice to the issuance of any further orders for the production of other data relevant and material to the inquiry * * *.

In a subsequent order issued October 4, 1963 (Tr. 493–505), the Commission said—

> The facts which will determine the issues in this case are by their very nature in the possession or knowledge of the respondent or of any person who controls the respondent or of any other company controlled by such person. In addition, facts may be in the possession of other, interconnected public utilities or persons and companies outside the Commission. A full knowledge of all the facts is essential to intelligent decision making by the Examiner and the Commission. To that end the Presiding Examiner shall issue all subpoenas or orders as are necessary to enable Staff to make a thorough and complete investigation and obtain all necessary data.
>
> * * * Hereafter the Examiner * * * should issue such subpoenas or orders.

Counsel for Indiana & Michigan assert in their brief (1) that the "Examiner and the Commission have evidenced an apparent bias in favor of Staff, and a prejudgment of the merits adverse to Respondent"; (2) that "Prehearing discovery was totally withheld from [*Indiana & Michigan*]"; and (3) that "Reasonable discovery during the course of the hearing although seemingly promised was similarly denied [Indiana & Michigan]". As has been shown, these claims are without merit. What the Commission and the Examiner actually did without violating rights of Indiana & Michigan was (1) to make it possible for the Staff to have access to the facts, which by their nature were in possession of those subject to the subpoenas, and (2) require counsel for Indiana & Michigan to stay within the bounds of orderly procedure. The jurisdictional problem in this case is peculiarly one for expert administration and that the statute has lodged in the Commission.

The need of the Commission to know all the facts, conditions, and practices of an electric system is particularly acute in a jurisdiction case involving a determination of whether certain sales are interstate or intrastate; for in such a case the Commission has said:

> * * * [N]arrow "tests" should be avoided and instead * * * the entire spectrum of pertinent factors should be examined. (*United Gas Pipe Line Co.*, 30 FPC 560, 563)

The procedure followed was wholly consistent with the standards of a full and fair hearing; kept the strategy and tactics of company counsel in their place; and allowed detachment, enabling the requests and contentions made to be viewed from the outside where Congressional intent and Commission motive, duty and regulatory purpose stand clear and tall. Equally applicable here are the words of the Court in *National Labor Relations Board* v. *Baldwin L. Works*, 128 F. 2d 39, 45, 46–48:

> * * * [R]espondent now * * * urge[s] upon us its * * * attorney's own partisan imputation of bias and prejudice as being fatal to the proceeding

* * * * * * *

> The examiner's refusal of the respondent's request for subpoenas was warranted. The witnesses whom respondent's trial attorney thus sought to summon [which included two members of the National Labor Relations Board], he intended to use in an effort to build up a record of irrelevancy and immateriality * * *. The examiner's action with respect to the particular subpoenas requested properly served to confine the hearing to the issues and, at the same time, it eliminated nothing that was either material or relevant to the case.
>
> * * * * * * *
>
> It is now urged by the respondent that the Board was biased and prejudiced * * *. To support the charge the respondent relies on articles written and speeches made by members of the Labor Board. But nowhere is there an allegation or showing that either the Board or any member thereof ever acted in respect to the subject matter of the instant complaint other than official and directly. The * * * current charge of bias and prejudice stands unsustained.
>
> * * * * * * *
>
> Whether there was due process in this case depends, therefore, upon whether the respondent was accorded the hearing which the law required. From the record before us, we are unable to see how the answer could be otherwise than in the affirmative.
>
> * * * * * * *
>
> * * * Surely, the respondent cannot justly say that it was not given an "opportunity to know the claims of the opposing party and to meet them." * * *

See also *Federal Trade Commission* v. *Cement Institute*, 333 U.S. 683, 700–703.

Decision of United States District Court For Northern District of Indiana

As pointed out, no evidence was offered, or could have been offered by the Commission Staff, at the first six preliminary sessions of the hearing, those sessions being concerned only with procedural matters. Because the Staff had not then been able to formulate their proposals, the discovery requests made by counsel for Indiana & Michigan at those sessions necessarily has to be regarded by the Examiner as speculative. For this reason alone, the requests were properly denied. There are, however, additional good and sufficient reasons for the denial of those requests and these have been set forth hereinabove and in the rulings made (*supra*, pp. 779–785).

Prior to the sixth preliminary session of the hearing held October 18, 1963, counsel for Indiana & Michigan initiated the complaint proceeding in *Indiana & Michigan Electric Co.* v. *Federal Power Commission*, 224 F. Supp. 166, seeking (1) judgment directing the Commission to issue subpoenas *duces tecum* and *ad testificandum* previously denied in this proceeding, and (2) an injunction enjoining the Commission or its agents from taking any further action in this proceeding pending a final determination of the issues.[33]

---

[33] With reference to the complaint proceeding, Staff counsel has stated (Tr. 1177–1178): "The District Court Judge had before him a complaint * * *. The record and pleadings * * * before the Examiner were not considered by the Judge. The Commission did not answer * * *; instead * * * filed a motion to strike and dismiss. For purposes of that motion only, the Judge had to assume, as a matter of law, that the facts alleged in I. & M.'s complaint were true. The question of whether the allegations were true was never resolved * * *. The Judge's characterizations of the Commission proceedings were based solely upon * * * allegations in * * * complaint. Examples of supposed inequities before

Footnote continued on following page.

Although granting the Commission's motion to dismiss the complaint, the Court characterized rulings of the Examiner referred to in its opinion as a "misunderstanding" of the "obvious invitation of the Commission" to Indiana & Michigan to move for prehearing discovery before the Examiner. In so characterizing the Examiner's action as a "misunderstanding" the Court seems not to have been aware of the fact that the Commission on November 13, 1963, or sixteen days prior to the issuance of the Court's decision on November 29, 1963, had rejected appeals of Indiana & Michigan from rulings of the Examiner for the production of data (see Tr. 701–702). This Commission action in the Examiner's mind, placed the Commission's stamp of approval upon the course followed by the Examiner in carrying out the intent of the Commission's prior orders. The Commission stated:

> Indiana-Michigan's motions * * * requesting the examiner to order the production of data, seek no material essentially different from that earlier rejected by the Commission nor are any significant new grounds advanced for seeking material. Further, the material requested by Indiana-Michigan in these motions is not at all comparable to the factual information as to its operations previously secured by the staff but instead consists of the intra-agency working papers of the Commission leading to the institution of this proceeding along with other material of even more questionable relevance. It is doubtful whether such material could ever properly be subject to examination by Indiana-Michigan. *A fortiori*, it can hardly be said that its inspection was necessary prior to the filing by the staff of its direct case, which was accomplished on November 4, 1963. Thus, were this material properly before us we would not be predisposed to reverse the examiner. * * *
>
> However, we do not reject the merits of these motions. We recognize that in a few recent situations we have accepted and considered interlocutory appeals * * *. But in those cases the pleadings submitted to us demonstrated a real need for early Commission intervention as well as probable cause for modifying the action taken below. Here there is no such showing: certainly the strong presumption against interlocutory appeals is not met by the mere allegation of extraordinary circumstances nor by a score card tally of the number of motions granted to other parties. Indiana-Michigan's appeals should * * * be rejected.

The District Court, on the basis of the information available to it, concluded that the Examiner's "misunderstanding" of what the Commission intended was reflected in the Examiner's initial ruling on the discovery requests made by Indiana & Michigan at the first session of the hearing held July 29, 1963. The Court stated:

> * * * On July 23, 1963, the Commission denied applications of Indiana & Michigan for the issuance of subpoenas duces tecum and ad testificandum. In the order denying [Indiana & Michigan's] application, the Commission recognized [Indiana & Michigan's] right to apply to the Examiner for the production of documents during the course of the Commission proceeding. In accordance with the obvious invitation of the Commission, the plaintiff addressed a motion to the Examiner on July 29, 1963 for an order granting the issuance of the subpoenas previously sought in the application to the Commission. The motion addressed to the Examiner was opposed by the

---

Footnote continued.

this Examiner are quoted * * * from I. & M.'s complaint, not from the record in this proceeding before the Examiner. Likewise, the Judge's statement * * * that the record before him shows that I. & M. will be denied 'fair play' clearly illustrates that the Judge was unaware of the actual proceedings * * *. Furthermore, the Judge's opinion shows that he was completely unaware of the body of law holding that inter-agency memoranda are not subject to discovery."

> Commission's staff, which alleged that the Examiner did not have authority to overrule the Commission, and the Examiner denied [Indiana & Michigan's] motion on August 9, 1963. Whatever the reason for the Examiner's misunderstanding, it has resulted in a complete and effective denial of any prehearing discovery for the plaintiff in the Commission proceeding.

The Commission admittedly left the Examiner the authority to permit discovery when the circumstances warranted.[34] But in so doing the Commission had said (Tr. 15):

> It may be that in the course of the hearing the parties may request certain specified material. Whether such request will or will not be granted is of course a matter to be considered by the hearing examiner in the first instance. Currently the staff has presented nothing.

This Commission ruling clearly contemplated, and orderly procedure required, that the Examiner act only within permissible limits when the circumstances warranted during the course of the hearing on the evidence, or at a time when the Examiner at least had a workable understanding of the issues which mark the bounds of possible discovery.[35] At the first session of the hearing the Examiner was in no position to know whether the Staff would be able to formulate a case, he having been advised by Staff counsel (Tr. 66), "the company has within its possession all of the engineering and other data which the staff sought access to formulate its case, *assuming it presents one?*" (see *supra*, p. 781).

As the Examiner has pointed out (*supra*, p. 781), discovery is not available merely for the asking. In fact, the Commission itself, in denying the same discovery requests repeated to the Examiner within six days of the Commission's action, had done so because *inter alia* "the relevancy or materiality of such material [sought in the subpoena duces tecum] to the facts upon which the issue of Commission jurisdiction must be determined is not demonstrated." That the relevancy or materiality could not have been demonstrated to the Commission is clear from the fact that the Commission pointed out that "Currently the staff has presented nothing." (Tr. 15) In so doing the Commission was making it clear that Indiana & Michigan could not know what, if anything, it had to discover until it knew the evidence it had to meet. The situation faced by the Examiner at the initial session of the hearing, as well as at all sessions of the hearing held prior to the District Court's decision on November 29, 1963, was no different. In denying Indiana & Michigan's initial discovery requests the Examiner stated, *inter alia* (Tr. 123–124):

> The requests of Indiana & Michigan * * * were repeated * * * in an effort to have the Examiner grant relief which the Commission has denied, it being

---

[34] The Commission had, on May 29, 1963, continued the commencement of the hearing from June 3 to July 29, 1963, to "afford reasonable opportunity * * * to prepare the material which the parties wish to present", and by so doing "granted more than the full time requested in order that the hearing may proceed without further adjournment" (*supra*, p. 760). Although the Commission's order contemplated that the parties would present their cases-in-chief on July 29, 1963, the Staff, by being denied access to evidence, was unable to do so. Indiana & Michigan, instead of complying with what the Commission's order contemplated, countered that order by repeating to the Examiner the requests which the Commission had denied six days earlier (*supra*, pp. 759–761).

[35] The last session of the hearing held prior to the District Court's decision was held on October 18, 1963. At that session the Examiner fixed November 4, 1963, the date requested by Staff counsel, as the date on which the Staff would serve its direct case by mail. Indiana & Michigan was allowed about a month longer, or until December 2, 1963, to file its case-in-chief. As to the rebuttal evidence, the Examiner overruled the suggestion of Staff counsel that Indiana & Michigan be required to file their rebuttal case, to the extent possible, as a part of their case-in-chief. Instead the Examiner ruled that "During the period of cross-examination or upon completion of that cross-examination the Examiner will fix a date on or before which the Staff and the parties are to file rebuttal evidence, if any." (Tr. 667–669, 679–680). This ruling made it clear that the hearing was to be held at intervals, not as a continuous, court-type proceeding.

> contended * * * by counsel * * * that the Commission has reserved to the Examiner the right to address himself to the matter "at the time that the hearing was formally convened."
>
> The Commission's order does not support counsel's contentions. The circumstances which existed on July 23rd when the requests were denied by the Commission were no different from those which existed only six days later * * * when the hearing convened. The Commission contemplated that the Examiner would take appropriate action during the course of the hearing, not prior thereto as requested by counsel. The Commission held that "Commission members * * * may not be examined either by deposition or at the hearing;" that staff witnesses may be cross-examined at the hearing as to material matters; and that data "in the public files and records of the Commission are now and have been available to Indiana-Michigan." Indiana-Michigan's argument that the Commission's ruling was erroneous is not a matter for Examiner determination. If Indiana-Michigan considers itself aggrieved and that the order is appealable its remedy lies in the Court of Appeals. As pointed out in the Commission's Rules * * * the Examiner is authorized —
>
> > to rule upon any motion *not* formally acted upon by the Commission prior to the commencement of the hearing * * *
>
> The clear meaning of this rule is that where the Commission has acted formally on a motion, the Examiner is not authorized to act upon such motion except to accept such action as binding upon him. In substance the motion puts Indiana & Michigan in the untenable position of requesting a Hearing Examiner to overrule the Commission.

While recognizing that "it is not within the scope of the issues now before this Court to review a discretionary order of the Commission," the District Court illustrated "the inequities presented by the Commission's rulings on matters of discovery" by stating that such—

> * * * inequities * * * are perhaps best understood by the following example:
>
> In the hearing before the Examiner on October 14, 1963, the Examiner granted a request by the Commission's staff for, among other things, "a general order of investigation authorizing the staff to obtain such documents *as they find necessary* in the files of Indiana and Michigan Electric Company and affiliated companies." [Italics added.]
>
> On October 18, 1963, the Examiner denied plaintiff's request for subpoena requiring production of documentary evidence relating to the engineering studies or other supporting written data upon which the Commission made its decision to publish a document issued in July 1963 containing a list of public utility companies (including plaintiff) which the Commission indicated it had, on the basis of available information, classified as public utilities under the Federal Power Act.

The example given is comprised of two parts. Each part will now be separately considered.[30]

---

[30] At the session of the hearing held March 10, 1964, counsel for Indiana & Michigan (Tr. 1181–1182), had marked for the record in the instant proceeding the record of the proceedings in the District Court (Exhibit 82), and the District Court's decision (83). But neither at that time, or at any other time, has the Examiner ever been made aware of the contents of the complaint filed with the District Court which served as the basis for the Court's action. As the Examiner stated (Tr. 1180), he "would welcome the review of this case by any court on its merits, and would welcome any court to scrutinize the procedure for errors. I don't have the slightest doubt as to what would be the decision of a court if it considered the case on the merits. Of course, the District Court couldn't do that. It found it didn't have jurisdiction."

I

The District Court's reference to a ruling made by the Examiner on October 14, 1963, actually refers to one of the Examiner's rulings made on October 18, 1963 (Tr. 614–621). That ruling, however, did not, as the Court believed, grant a request made by the Commission's staff but, as counsel for Indiana & Michigan pointed out on the day the ruling was made (Tr. 672), was "the unsolicited order of the Examiner". While the Examiner requested Staff counsel to prepare the order for issuance by the Examiner, so far as the Examiner is aware, no draft of order was ever prepared and no general order of investigation was ever issued by either the Examiner or the Commission (see *supra*, p. 779).

The Examiner's reasons for requesting the Staff to prepare a general order of investigation is set forth in his extended statement appearing at pages 614–621 of the transcript. An adequate portion of those reasons for this decision is hereinabove set forth (*supra*, pp. 779–780). The Examiner concluded his extended statement:

> In view of these circumstances, and in lieu of adopting and issuing the draft of order presented to me this morning by Staff Counsel, the Examiner will direct the issuance of a general order of investigation authorizing the Staff to obtain such documents as they find necessary in the files of Indiana & Michigan * * * and affiliated companies and the two individuals named by the Commission in prior orders * * *.
>
> The Staff will, therefore, submit to the Examiner for his signature a draft of order authorizing the Staff to conduct such general investigation as it finds necessary to place itself in possession of complete data.
>
> In thinking about this matter since the last hearing, the thought occurred to me that unless the Staff had free access to the company's files it is conceivable that it might be greatly hampered in connection with presenting rebuttal evidence. The task of the Commission Staff and the parties to a proceeding of this kind is to know the facts at the outset, and unless they do, the hearing—as I think the record here indicates—is likely to be unduly drawn out. The Commission has too much work to perform to permit the proper procedures authorized by the Act to be hampered in any manner.

While the District Court was of the opinion that it was "Following exhaustive discovery of [Indiana & Michigan's] records and data," that "the Commission directed [Indiana & Michigan's] * * * and six operating subsidiaries to permit inspection of and to produce additional voluminous documentary evidence" (224 F. Supp. at 167), the Examiner's understanding was different. In fact, Staff counsel had advised the Examiner at the last session of the hearing held prior to the Court's decision (Tr. 629–630):

> It is true that when we were in Indiana, at the properties of Indiana & Michigan * * *, Staff was permitted to see those specific documents or papers that it asked to see, also those specific properties.
>
> It is not true that we were given free access to all of the records of Indiana & Michigan and all the properties.
>
> * * * And data that was requested from Indiana & Michigan * * * by the Staff was very, very slow in coming. * * *

The following additional excerpt from the transcript covering the sixth session of the hearing speaks for itself (Tr. 636):

> [Staff Counsel]: * * * In the guise of saying [company counsel] is willing to cooperate and that these companies are willing to cooperate and give us access to the data they can think of many, many arguments where Staff should not have access to the data. And the conclusion this leads me to is in two parts, really.

> First, the companies are trying to delay the proceeding, and secondly, and this bothers me, there is some data which these companies have which they are trying to hide from the Commission. I don't think reasonable men would draw other conclusions from what has gone on here so far.
>
> Presiding Examiner: Well, regardless of what the situation is, the Commission has said in its latest order that its original show-cause order contemplated a full and complete access to information bearing upon the issues in this proceeding, and it has referred to the fact that Indiana & Michigan carries on, among other things, an integrated operation indicating that energy comes from other sources. And it is simply to put you in a position to do what the Commission says you have a right to do that I am going to issue the orders, the general investigation orders to which I have referred.[37]

II

With reference to the Examiner's ruling of October 18, 1963, referred to by the District Court, the transcript shows *inter alia* (Tr. 642, 645–646):

> [Company Counsel]: * * * Mr. Examiner let me now make a motion * * * that the Examiner issue subpoena duces tecum addressed to the Secretary of the Commission or the Records Officer * * * directing—
>
> * * * * * * *
>
> * * * the Secretary or such Records Officer, sir, to produce at the offices of the Commission in Washington at a hearing session to be designated by the Examiner, all books, records and writing containing or relating to the engineering studies and other supporting written data upon which the decision was made to publish the name of the * * * Commission a document dated January 1963, issued in July of that year, and entitled "List of Electric Power Suppliers With Annual Operating Revenues of $2,500,000 or more Classified as Public Utilities under the Federal Power Act."
>
> * * * * * * *
>
> We also respectfully request the Examiner to order the Secretary of the Commission, or the records retention officer, to advise respondent of the identity of the person or persons under whose authority this pamphlet was prepared and issued.
>
> * * * * * * *
>
> Presiding Examiner: * * * [W]as this publication to which you referred * * * the subject of a news release on the part of the Commission? If so, is that one of the news releases you previously called to my attention? And I have specific reference to Release No. 12759.
>
> [Company Counsel]: I am afraid I honestly can't recall, Mr. Examiner. I do understand that there is a release ,and that the release is No. 12759. It appears that the release was issued on July 1, 1963. Now I believe I recall that there has been in the proceedings so far a reference to this release.
>
> Presiding Examiner: * * * [A]pparently you have a copy of this release before you.
>
> [Company Counsel]: I do, sir.
>
> Presiding Examiner: Do I correctly read paragraph 5 as follows:
>
> > The Commission pointed out that omission of any suppliers from the list does not mean that they are not subject to jurisdiction but only that

---

[37] As has been pointed out, the general investigation order which the Examiner authorized to be issued was not in fact issued because no such order was ever prepared and presented to the Examiner for issuance. Staff counsel apparently decided to rely on the evidence that they had been able to obtain up to that date.

> they have not been classified as public utilities for the purposes of the * * * Act. Conversely, the Commission said it recognized the legal right of electric power suppliers classified as public utilities to challenge that classification in FPC proceedings.
>
> Do I correctly read that?
>
> [Company Counsel]: I see those words in Release 12759.

Counsel for Indiana & Michigan here sought to inquire into a tentative classification which had been made for Commission purposes. In making this tentative classification the Commission was careful to recognize "the legal right of electric power suppliers classified as public utilities to challenge the classification in FPC proceedings", and this is the right here being provided to Indiana & Michigan. Significant in this connection is the fact that at the very first session of this proceeding counsel for Indiana & Michigan had recognized that the business of Indiana & Michigan gave it a "public utility" status under the Act. He stated (Tr. 73; see *supra*, p. 762 n. 13):

> We don't disagree that Indiana and Michigan * * * has in the past and now transmits some electric energy in interstate commerce within the meaning of the Act.

And as the Examiner had occasion to observe later in the hearing (Tr. 1667), "if the Commission did as good a job as to the other companies as they did with respect to Indiana & Michigan * * * the list must be accurate." But whether the list is accurate as to the other companies is not, in the Examiner's view, relevant and material to the issues in this proceeding. Each company challenging the Commission's tentative classification will have its day in court.

In denying the motion, the Examiner stated in part:

> * * * As I indicated at page 482 of the transcript, parties before the Commission are not entitled to examine into the official performance of the Commission's duties. Moreover, tentative conclusions reached by the Commission in its publications must, as the Commission has made abundantly clear by its orders in this proceeding, be supported solely on the evidence in the record to be made in this proceeding, and not on any other basis. * * *
>
> Counsel will have ample and complete opportunity to cross-examine any witness presented * * *, and the Examiner does not believe that denial of this motion in any way hampers Indiana & Michigan * * * in the presentation of evidence in this proceeding. (Tr. 652)
>
> * * * * * * *
>
> The decision to be made in this case is a decision with respect to the facts of operation. * * * Indiana & Michigan * * * now possesses and apparently has always possessed full information concerning its complete operations. Congress authorized the Commission to take whatever appropriate methods it authorized to ascertain what those facts are. And what the Commission and the Staff have been doing is seeking access to the facts. The matter you are referring to, unless you can classify a tentative designation as being relevant, is not concerned with the specific matter involved in this proceeding.
>
> For those reasons * * * I disagree with the statement [company counsel] made. (Tr. 654)
>
> * * * * * * *
>
> Well * * * [the Commission] may use different methods as to different companies, but that doesn't mean any of the methods used is not a proper one for a tentative designation. (Tr. 655)

While the District Court has expressed the view that—

> * * * this Court is not unmindful of the fact that the record in the instant case constitutes an alarming example of how a private litigant before an administrative agency may be denied the opportunity to pursue the orderly procedures so vital to our traditional notions of fair play. * * *

the Examiner believes that if the Court had had the benefit of a consideration of the case on the merits its views would be similar to those expressed by the Examiner herein. As the Examiner has stated (*supra*, p. 788 n. 36), he welcomes "the review of this case by any court on its merits."

INDIANA & MICHIGAN'S MOTION TO EXAMINER TO DEFER ISSUANCE OF INITIAL DECISION

After the briefs were filed herein, counsel for Indiana & Michigan, on August 24, 1964, moved that the Examiner follow a course parallel to that prescribed by the Commission in the *Dairyland* proceeding and defer any further action until Congress has had an opportunity to consider legislation in the 89th Congress of the type embodied in S. 2028 and S. 3038, 88th Congress. This motion, vigorously opposed by Commission counsel, is denied for the reasons hereinafter set forth.

Consideration will first be given to S. 2028 and the Commission's order issued in the *Dairyland* case.

As counsel for Indiana & Michigan point out, by its order "issued August 6, 1964 [32 FPC 529] in the *Dairyland* * * * proceeding, Docket No. E-7113 * * * the Commission directed the examiner [in that case] to defer issuing his initial decision until January 1, 1966 in order that 'further Congressional consideration' could be given to * * * S. 2028. That bill, in substance, would amend the Federal Power Act by adding 'any nonprofit cooperative engaged in rural electrification' to the list of organizations expressly exempted from the regulatory jurisdiction of the Commission. S. 2028 would, if enacted, also direct the Commission to suspend any proceeding, such as the *Dairyland* proceeding, instituted for the purpose of establishing jurisdiction over cooperatives." "The Commission order deferring further proceedings in the *Dairyland* case followed two requests from the Senate Committee on Commerce."

The decision herein, however, is not concerned, as is S. 2028 and the *Dairyland* proceeding, with Commission jurisdiction over cooperatives. Rather it is directed to the Commission's performance of its duty to provide cooperatives and municipalities with the benefits of regulation of the public utility from which they buy (see *supra*, pp. 756–757). Then, too, no Congressional committee has requested the Commission to defer action in this type of case, nor has the Commission issued an order requiring the Examiner so to do.

As to S. 3038, it was presented to the Senate late in the 88th Congress and counsel for Indiana & Michigan call attention to the fact that if enacted into law this legislation would limit Commission jurisdiction in the manner set forth in the margin.[38] In this connection there have been few sessions of Congress in which members have not introduced legislation affecting Commission jurisdiction. Only a small part thereof has become law. Accordingly, deferral of Commission action pending possible enactment of legislation would effectively tie the hands of the Commission and prevent it from exercising the authority Congress intended it to exercise in the public interest, particularly consumer interest. Normally it is much better for the Commission to continue exercising the authority it has while proposed amendments to the law are being considered by Congress.

---

[38] S. 3038, introduced on July 28, 1964, would amend the Federal Power Act in respect of the jurisdiction of the Commission. It would amend Section 201 of the Act by adding the following new subsection:

(g) Notwithstanding any provision contained in subsection (b) of section 201 of this part, the provisions of this Act applicable to a public utility shall not apply to, and the Commission shall not have jurisdiction over, the transmission of electric energy in interstate commerce or sale at wholesale of electric energy in interstate commerce hereafter described, or over facilities by reason of their use for: (1) the transmission of electric energy in interstate commerce or sale of electric energy in interstate commerce or both to the extent transmitted by a local electric system of a State from a point within or at the boundary of such State and either sold at retail, or sold or delivered to another local electric system in said State, at another point within the same State, even though a part

S. 3038 raises jurisdictional questions and problems of great importance to the nation, particularly in the light of the fact that, as the facts in the instant case sharply illustrate, production of electric energy is fast losing its company and system identity and becoming area and national business. This is being accomplished by the proper location of large generating plants[39] and improved methods of operation and interconnected transmission enabling generating plants located in one State to serve many States through integrated power pools. Moreover, this is being done in a way in which only the initiated may have anticipated. Accordingly, in the Examiner's view, issuance of this decision may aid consideration of proposed legislation, assuming legislation of the type embodied in S. 3038 is reintroduced in the 89th Session of Congress.

The motion requesting the Examiner to defer issuance of this decision is tantamount, in the Examiner's view, to an admission that the Commission, on the basis of the record made, has jurisdiction over the sales to the cooperatives and municipals involved in this proceeding, otherwise the filing of the motion would have been meaningless. Thus what counsel for Indiana & Michigan have strongly asserted in resisting Commission jurisdiction appears to be effectively denied by the motion filed.

The order accompanying this decision does not exceed the power, but makes effective the duty, of the Commission in the circumstances of this case. As the

---

or all of the electric energy so transmitted and sold or delivered was generated outside of said State by the transmitter or another or a part thereof is subsequently transmitted to another State: Provided, however, That whenever the seller, purchaser or transmitter is a local electric system of more than one State, and the States directly concerned are unable to agree through their properly constituted authorities on the terms of any such transmission of electric energy in interstate commerce, or sale at wholesale of electric energy in interstate commerce, or on the rates or charges of payment therefore, jurisdiction is hereby conferred upon the Commission, upon the request of any State concerned, to regulate and control that portion of such transmission of electric energy in interstate commerce or sale at wholesale of electric energy in interstate commerce and of the rates or charges of payment therefor, upon which such States are unable to agree; or (2) the passage of electric energy between two or more electric systems incidental to the operation of such systems in parallel with each other or other systems and resulting from or associated with power pulsations, changes in frequency or power factor, inadvertent interchange, outage of equipment, or abnormal operating conditions. The term 'local electric system' when used in this subsection means any person, or other entity, operating in any State where all of the electric facilities of such person or entity are located or where the major portion of the electric revenues of such person or entity from operations within such State is derived, either directly, or indirectly through one or more agencies or members, from the sale of electric energy at retail within such State. The matters exempted from the provisions of this Act applicable to a public utility, by this subsection are declared to be matters primarily of local concern and subject to regulation by the States, and permission for the exercise of this power by the several States is hereby specifically granted.

[39] As Mr. Sporn has pointed out (see *supra*, p. 770), when "it became necessary to locate additional plant sites, the integrated [AEP] system was utilized in a search for other sources of generation. For example, the location of the new Sporn Plant was determined entirely by the existence of the integrated system." Furthermore, as has also been pointed out (*supra*, pp. 772–773), "In order to keep costs to a minimum, all except one of the AEP System's plants are located in close proximity to fuel sources and several are virtually minemouth plants."

Supreme Court pointed out in *Penn Water*, "Part II [of the Federal Power Act] proceeds on the assumption that regulation of public utilities transmitting and selling power at wholesale in interstate commerce is a matter which must be accomplished by the Federal Government." (343 U.S. at 418.)

Findings Not Relevant Or Material To This Decision Need Not Be Made

The proposed findings of fact and conclusions of law, upon each of which counsel for Indiana & Michigan request a ruling, total 552 in number and cover 141 pages of their main and reply briefs. Staff counsel had an opportunity, in their reply brief, to express their views only as to the 454 proposed findings set forth in Indiana & Michigan's main brief, and in doing so object to each and every one of these proposed findings as not being "necessary or appropriate to a decision in this case; * * * not relevant to the issues; they do not accurately reflect what is in the record; they frequently distort the evidence, either directly or by out-of-context selection."

The Examiner's understanding and consideration of the relevant evidence and applicable law is, of course, set forth hereinabove. Considerably less and different findings than the 552 proposed by counsel for Indiana & Michigan are sufficient and justified in this case.

There is no valid reason why an administrative agency should make findings related to theories not adopted by the agency, or upon issues not material or relevant to its decision. This is so even where the rejected findings are considered by a party to be relevant to the decision it desires. It is sufficient that the agency find the facts on which its conclusions rest and that such findings be supported by substantial evidence (*Hartford Electric Light Co.* v. *Federal Power Commission*, 131 F. 2d 935, cert. den. 319 U.S. 741). This, of course, does not leave Indiana & Michigan without the means with which to maintain its contentions. They are fully set forth in its briefs. Accordingly, any claimed deprivation of the opportunity and means of presenting its position would be mere obfuscation.

ADDITIONAL FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in this proceeding, including the pleadings, the evidence adduced and the briefs filed, it has been found and concluded, in addition to the findings and conclusions heretofore stated, that:

(1) Indiana & Michigan is a corporation organized and existing under the laws of the State of Indiana. It is also qualified under the laws of the State of Michigan to transact business as a foreign corporation in that State. It owns and operates facilities, among others, for the transmission and sale at wholesale of electric energy which is transmitted between the States of Indiana, Michigan, Illinois, Ohio and Kentucky and consumed outside the State in which it is generated, all of which facilities are in addition to and do not include facilities used for the generation of electric energy, facilities used in local distribution or only for transmission of electric energy in intrastate commerce, or facilities for the transmission of electric energy consumed wholly by the transmitter. Indiana & Michigan is, therefore, a public utility within the meaning of that term as used in the Federal Power Act, as heretofore found by the Commission, 10 FPC 1315 at 1316, 9 FPC 617 at 618, 4 FPC 783 at 785.

(2) Indiana & Michigan is an integral part of the AEP System. It is one of six affiliated operating electric utilities making up the AEP System. The six companies, with their power plants and transmission lines interconnected and their operations completely integrated, operate as a single major electric system serving a region covering portions of seven States—Michigan, Indiana, Ohio.

Tennessee, Kentucky, Virginia and West Virginia. To provide service to this area, the AEP System has built a giant chain of properly located generating plants.

(3) All the generating plants and the load centers of the AEP System are tied together by a network of some 14,000 circuit miles of transmission lines, extending from Lake Michigan to the border of North Carolina and including more than 1,500 circuit miles of 345,000-volt lines. Each plant thus supports, and in turn is supported by, the others. Furthermore, the AEP System is interconnected with 19 nonaffiliated electric power systems at 66 locations.

(4) Three main dispatching points—at Canton, Ohio; Roanoke, Virginia; and Fort Wayne, Indiana—working closely with a central AEP System coordinating group located in Columbus, Ohio, direct the generation and flow of power throughout the seven-state network, as well as the interchange of power with other systems, to assure maximum use of facilities and maximum economy.

(5) The facilities of the AEP System, including the facilities of Indiana & Michigan, are at all times operated as an integrated power pool.

(6) The central dispatching office regularly engages in firm, economy, and emergency energy transactions between the AEP System and neighboring interconnected electric utilities. Maintenance outages are regularly scheduled and coordinated among the constituent companies of the AEP System to assure an adequate and continuous supply of electric energy to all customers.

(7) Since the resources of the AEP System power pool are available to meet the combined load of its members, without reference to State boundaries, such a pool is an integrated and coordinated interstate electric system, and the sales of system energy, such as those by Indiana & Michigan to the twenty-four municipals and cooperatives referred to in (8) below, are pool sales, and hence, in the light of the interstate nature of the pool are sales in interstate commerce.

(8) Michigan & Indiana sells electric energy to Niles and Sturgis, Michigan, and to the Fruit Belt Electric Cooperative in Michigan. It also sells electric energy to fourteen Indiana municipals, namely, Albion, Anderson, Auburn, Avilla, Bluffton, Columbia City, Fort Wayne, Frankton, Garrett, Gas City, Mishawaka, New Carlisle, Richmond and Warren, and to seven Indiana cooperatives, namely, Allen-Wells County REMC, Huntington County REMC, Jay County REMC, Noble County REMC, Paulding-Putnam Electric Cooperative, Inc., Wayne County REMC, and Whitley County REMC.

(9) Each of the twenty-four sales, referred to in (8) above, is a sale at wholesale for resale in interstate commerce within the meaning of Sections 201, 205 and 206 of the Federal Power Act.

(10) The facilities of Indiana & Michigan by which Indiana & Michigan transmits and delivers electric energy to its municipal and cooperative customers are not facilities used in local distribution within the meaning of Section 201(b) of the Federal Power Act even if this were relevant.

(11) Michigan & Indiana has not filed rate schedules for service to the municipal and cooperative customers referred to in (8) above. It therefore has been violating and continues to violate the provisions of Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations thereunder.

(12) Indiana & Michigan should therefore be ordered to file with the Commission its rates and charges for service to the twenty-four municipal and cooperative customers and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services, pursuant to the provisions of Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations thereunder.

ORDER

WHEREFORE, *It is ordered*, subject to review by the Commission:

Within thirty days after this order becomes the final act of the Commission, Indiana & Michigan shall file in accordance with Part 35 of the Commission's Regulations and Section 205 of the Federal Power Act, its contracts in effect as of April 16, 1963 with each of the twenty-four municipal and cooperative customers, referred to in (8) above, as its rate schedules for its sale at wholesale of electric energy to those twenty-four customers. Such rate schedules shall remain effective until and unless superseded by a change filed pursuant to Section 205(d) of the Act and Section 35.3(a) of the Regulations thereunder, or changed pursuant to order of this Commission.

FRANCIS L. HALL,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SOUTHWEST GAS CORPORATION, DOCKET NO. CP65-99

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 14, 1965)

Southwest Gas Corporation (Applicant) filed on October 13, 1964, in Docket No. CP65-99 an application and supplements thereto on January 4 and February 15, 1965, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing (1) the operation of its existing northern Nevada Transmission system as an interstate transmission pipeline; (2) the continuation of the sale and delivery of natural gas to its existing resale customer, Sierra Pacific Power Company (Sierra); (3) the construction and operation of natural gas facilities; and (4) the sale of natural gas to the South Tahoe Gas Company, all as more fully set forth in the application.

Under proposals of Applicant the operation of the said facilities will cease to be intrastate. The facilities now sought to be certificated consist of (1) 307 miles of 16-inch, 12-inch and 8-inch O.D. pipelines and extension; (2) 330 miles of 8-inch, 6-inch and 4-inch lateral pipeline facilities serving and proposed to serve various city gate distribution metering points and direct sale customers; and (3) metering and regulating facilities operated in connection with the aforementioned pipelines and lateral lines.

Applicant further proposes to (a) construct and operate metering and regulating facilities necessary to deliver natural gas to South Tahoe Gas Company at the Nevada-California state line for resale to approximately 5,000 customers at the south end of Lake Tahoe in El Dorado County, California, and (b) continue the sale and delivery of natural gas to the Sierra Pacific Power Company (Sierra) on a firm and interruptible basis for distribution in the Reno-Sparks area of Nevada, and for electrical generation at Sierra's Tracy Steam Plant.

The northern Nevada system of Applicant commenced operations on January 17, 1963, under the operation of Nevada Northern Gas Company with natural gas supplied by El Paso Natural Gas Company pursuant to authorization issued August 28, 1962, in Docket No. CP62-233, 28 FPC 371. Applicant will purchase natural gas daily from the Northwest division of El Paso at the Nevada-Idaho boundary line under El Paso's PL-4 tariff paying 38.0 cents per

Mcf (3.58 cents per therm for 1,060 Btu gas). Applicant will transport the gas in a southwesterly direction to its principal market approximately 275 miles from the point of receipt.

The estimated annual and peak day requirements of Applicant for the calendar years 1965, 1966, and 1967 are summarized as follows:

Annual Volumes, MMcf			Peak Day Volumes, Mcf		
1965	1966	1967	1965	1966	1967
10,204	12,937	14,211	49,685	52,000	52,000

The tariff proposed by Applicant provides for a Wholesale Firm Service (G–1) for Nevada, a Wholesale Firm Service (G–2) for California, a Large Volume Interruptible Service (I–1) for Nevada, and a Large Volume Interruptible Service (I–2) for El Dorado County, California. The G–1 rate is a four-step block rate of 90 cents per Mcf for the first 25,000 Mcf each month, 65 cents per Mcf for the next 25,000 Mcf, 55 cents per Mcf for the next 25,000 Mcf, and 50 cents per Mcf for usage above 75,000 Mcf per month and is currently on file with the Nevada Commission. The G–2 Rate available to South Tahoe is 7 cents per therm (approximately 70 cents per Mcf). The I–1 Rate is 48.0 cents per Mcf with a minimum annual requirement of 2,500,000 Mcf for the first three years and 3,250,000 Mcf each year thereafter (currently filed with the Nevada Commission). The I–2 Rate available to South Tahoe is 5.238 cents per therm, with no minimum bill provision.

Notice of Intervention filed by The People of the State of California and the Public Utilities Commission of the State of California on January 7, 1965, was withdrawn on February 8, 1965.[1]

The estimated 1967 average net and gross plant for the Northern Nevada System, including distribution, transmission, intangible and general will be $19,879,895 and $23,117,309 respectively. The estimated cost of metering and regulating facilities to be constructed by Applicant at the south end of Lake Tahoe, Douglas County, Nevada, is $5,392, and will be defrayed with current working funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application, other than that filed and withdrawn by the State of California and the Public Utilities Commission of the State of California have been filed.

At a hearing held on April 9, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence including the application, supplements and exhibits submitted in support of the authorizations sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Southwest Gas Corporation, a California corporation having its principal place of business in Las Vegas, Nevada, upon commencement of the proposed transportation of natural gas in interstate commerce and the sale of natural gas in interstate commerce for resale will be engaged in the business of transporting and selling natural gas in interstate commerce subject to the jurisdiction of the Commission and will therefore be a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The proposed continued operation of facilities, construction and operation of facilities, transportation and sale of natural gas in interstate commerce as

---

[1] Withdrawal acknowledged by Commission letter dated March 16, 1965.

hereinbefore described, and as more fully described in the application, supplements and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The proposed continued operation of facilities, construction and operation of facilities, transportation and sale of natural gas in interstate commerce as hereinbefore described are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to the Applicant in this proceeding authorizing the continued operation of facilities, construction and operation of facilities, transportation and sale of natural gas in interstate commerce as more fully described in the application, supplements and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized to be constructed and operated by Applicant shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid regulations within six months of the date on which this order issues.

(D) Southwest Gas Corporation shall file within 30 days after the issuance of this order its tariff and appropriate service agreements executed in accordance with the Commission's Regulations reflecting the terms and conditions of the transportation, sale and delivery of natural gas on its proposed system to the Sierra Pacific Power Company and South Tahoe Gas Company.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP65–249

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued April 14, 1965)

On February 23, 1965, United Gas Pipe Line Company (Applicant), filed in Docket No. CP65–249 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain natural gas facilities originally installed to serve Spencer Chemical Company (Spencer), as more fully described in the application.

The facilities which are proposed for abandonment consist of an orifice meter, regulator and separator installation located near Spencer's property located in Orange County, Texas.

The reason for the proposed abandonment is that the most recent contract between Applicant and Spencer, dated July 27, 1956, expired by its own terms on January 1, 1965, and no renewal or extension of the agreement has been made. Applicant has been advised that Spencer will purchase its gas supply from another source.

Due notice of the filing of the application was published in the Federal Register on March 11, 1965 (30 F.R. 3335). No petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 9, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G-232 (3 FPC 863).

(2) The facilities to be abandoned, as hereinbefore described and as more fully described in the application in this proceeding, are subject to the jurisdiction of the Commission and abandonment of such facilities by Applicant is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) Such abandonment, as hereinbefore described and as more fully described in the application in this proceeding, is permitted by the public convenience and necessity and an order approving same should be issued as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment by United Gas Pipe Line Company of the facilities hereinbefore described, as more fully described in the application in this proceeding, be and the same are hereby granted.

(B) Applicant shall advise the Commission of the date of abandonment of the facilities within 10 days thereafter.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

M. M. ARGO, DOCKET NO. RI65-221

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICE AND CONTRACT AMENDMENT, AND TERMINATING PROCEEDING

(Issued April 15, 1965)

On March 5, 1965, M. M. Argo (Argo) submitted an offer of settlement in this proceeding pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure. The offer involves a proposed increased rate for sales of natural gas to Tennessee Gas Transmission Company (TGT) by Argo made under Supplement No. 6 to Argo's FPC Gas Rate Schedule No. 2 in Panola and Harrison Counties, Texas (Texas R.R. Com. District #6). The proposed increased rate was suspended by order of the Commission for the statutory period in Docket No. RI65-221, and has not been made effective.

Under the terms of the offer, Argo proposes to eliminate the periodic escalation, favored-nation and price redetermination provisions from the rate schedule and to establish a 15¢ per Mcf rate for the subject sale. No protests or objections have been filed to the offer.

The proposed settlement is consistent with the provisions of the Second Amendment to the Commission's Statement of General Policy No. 61-1, issued December 20, 1960, 24 FPC 1107, as amended by Order No. 264, issued March 27, 1963, 29 FPC 589, and its acceptance would serve the public interest.

However, we desire to make it clear that acceptance of Argo's offer of settlement shall not be construed as approval of any future increased rate filed in accordance with its reservations of the right to file increases to cover future tax increases, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving Argo's rate and rate schedule.

The Commission finds:

The proposed settlement by Argo of the above-designated proceeding on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Argo on March 5, 1965, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed with the Commission by Argo on March 5, 1965, is hereby approved in accordance with the provisions of this order.

(B) Argo shall file, within 30 days from the date of issuance of this order, a notice of change in rate providing for the 15¢ per Mcf rate specified in its offer of settlement, and an executed contractual amendment to its FPC Gas Rate Schedule No. 2 eliminating the favored-nation, price redetermination and periodic escalation provisions therefrom. The notice of change and the contractual amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Upon notification by the Secretary of the Commission that Argo has complied with the terms and conditions of the order, the rate and charge of 15¢ per Mcf at 14.65 psia, specified in its offer of settlement shall be effective as of the date of issuance of this order and the above designated proceeding shall be deemed terminated.

(D) The acceptance by the Commission of Argo's offer of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Argo, including area rate or other similar proceedings.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

LANDS WITHDRAWN IN POWER SITE RESERVE NO. 8 AND PROJECT NO. 2273, DOCKET NO. DA-567-IDAHO, BOISE LAND OFFICE, BUREAU OF LAND MANAGEMENT

ORDER DENYING APPLICATION UNDER SECTION 24 OF THE FEDERAL POWER ACT

(Issued April 15, 1965)

Application was filed by the Boise Land Office of the Bureau of Land Management (Applicant) Department of the Interior, seeking restoration to entry, under

Section 24 of the Federal Power Act of the following described lands of the United States withdrawn for power site purposes:

Boise Meridian, Idaho

T. 27 N., R. 1 E., sec. 3, Lots 2, 6, 7, and 10

Applicant advises that portions of the lands will be sold under the Small Tract Act of June 1, 1938 for residence sites; that a small portion will probably remain in public ownership for recreation purposes and access to the Salmon River, and that the remaining portions will be sold as isolated tracts under Section 2455 of U.S. Revised Statutes for unknown uses.

The lands lie on the east bank of the Salmon River about 58 miles above its mouth at the Snake River and about 5 miles upstream from the Village of Whitebird, Idaho.

The lands are withdrawn in Power Site Reserve No. 8 dated July 2, 1910, and were also withdrawn pursuant to the filing on August 22, 1960 of an amended application for license for the proposed Nez Perce Project No. 2273. According to maps filed as part of the application for the latter project, approximately one-fourth of the subject lands would be flooded by the backwaters of the main reservoir. While in our Opinion No. 418, of February 5, 1964, 31 FPC 247, we denied the application for Project No. 2273 in favor of the application for Project No. 2243 (High Mountain Sheep), our action did not affect the power value of the subject lands. Moreover, the lands would be affected by flowage of the U.S. Corps of Engineers' suggested Lower Canyon site project near the mouth of the Salmon River or any of the suggested several alternate sites, such as Whitebird, the dam of which would be located in the reach of the Salmon River herein involved.

The subject lands have flowage value for power development. The use of the lands for residence sites and for other costly improvements could materially impair their power value. Consequently, on the basis of available information, neither the power withdrawals pertaining to the lands should be revoked or cancelled nor a restoration of the lands be made under the provisions of Section 24 of the Federal Power Act.

The Commission finds:

The subject lands are valuable for power purposes.

The Commission orders:

The aforesaid application is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

CITY OF NORWICH DEPARTMENT OF PUBLIC UTILITIES, PROJECT NO. 2441

ORDER ISSUING LICENSE (MINOR)

(Issued April 15, 1965)

Application was filed on January 27, 1964, by the City of Norwich Department of Public Utilities (Applicant) of Norwich, Connecticut, for a license under Section 4(e) of the Federal Power Act (Act) for constructed minor Project No. 2441, located on the Shetucket River, in the City of Norwich, in New

London County, Connecticut. No lands of the United States are affected by the project.

The dam, known as the Greenville Dam, and the project were constructed in 1888 and major repairs were made thereto in 1915. The hydroelectric plant was added in 1927. No major alterations or new installations have been made since the latter date.

According to available records, the range between high and low tide at Norwich, on the Shetucket River measured about 2 miles downstream from the Greenville dam, is about 3 feet, and full discharge from the existing plant, which is located within the tidewater reach, is capable of fluctuating the stream below the powerhouse as much as a foot or two at high tide.

The Secretary of the Army and the Chief of Engineers have reported that the plans of the project structures affecting navigation are satisfactory insofar as the interests of navigation are concerned.

The Department of the Interior, in reporting on the application recommended, for inclusion in any license for the project, a special condition concerning fish passage facilities.

The Department of Health, Education and Welfare has advised that the project has no adverse effects on water supply or water pollution control and none is anticipated.

By Article 13 herein we are requiring Applicant to cooperate with State, local agencies and individuals in the interest of recreation in connection with the use of project lands and waters by the public and that it shall report the results of such cooperation and development to the Commission at six year intervals from the date of its license.

In accordance with the criteria set forth in our April 25, 1962 Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of April 1, 1962 and a terminating date of December 31, 1993.

The Commission finds:

(1) The Shetucket River is a navigable water of the United States from its mouth at least up to the Greenville dam.

(2) The project affects navigable waters of the United States.

(3) Applicant is a municipal corporation organized under the laws of the State of Connecticut, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(4) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(5) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resource for public purposes which should be undertaken by the United States.

(6) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(7) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 1067 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the cost of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(8) It will be in the public interest to waive pursuant to Section 10(i) of the Act the terms and conditions contained in the following sections of Part I of the Act:

Section 4(b), except the second sentence thereof; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 15; 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

The Commission orders:

(A) This license is hereby issued to City of Norwich Department of Public Utilities (Licensee), of Norwich, Connecticut, under Section 4(e) and 10(i) of the Federal Power Act (Act) for the continued operation and maintenance of the Greenville Hydro Plant Project No. 2441, located on the Shetucket River, a navigable water of the United States, in New London County, Connecticut, subject to the terms and conditions of the Act insofar as not expressly waived herein, which Act is incorporated herein by reference as a part of this license and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2441 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined.

(ii) (1) a wood crib dam faced with planks; (2) a canal 3,150 feet long extending to the powerhouse, known as the Second Street Hydro Station, containing 2 water wheels each connected to a 500 kva generator, and (3) appurtenant facilities.

(iii) all other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, and all rights and interests, the possession of which is necessary or appropriate in the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-9 (July 1, 1964) entitled "Terms and Conditions of License for Constructed Minor Project Affecting Navigable Waters of the United States (32 FPC 577), which terms and conditions, designated as Articles 1 through 11, are attached hereto, and made a part thereof; and subject to the following special conditions set forth herein as additional articles:

Article 12. The Licensee shall, for the conservation, and development of fish resources, construct, maintain, and operate, or arrange for construction, maintenance and operation of such fish passage facilities and comply with such reasonable modifications of project structures and operation as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the Connecticut State Board of Fisheries and Game, after notice and opportunity for hearing and upon findings based on substantial evidence that such facilities and modifications are necessary and desirable, reasonably consistent with the primary purpose of the project, and consistent with the provisions of the Act.

Article 13. Licensee shall cooperate with State and local agencies and individuals in the development and maintenance of access areas and roads and such other facilities necessary for full recreational utilization by the public of project lands and waters, consistent with the terms of the license and the operation of the project. At the end of six (6) years from the date of issuance of this license and every sixth year thereafter, licensee shall advise the Commission of the results of cooperation with State and local agencies and of further recreation development at the project.

Article 14. The Licensee shall pay to the United States the following annual charge, effective April 1, 1962:

For the purpose of reimbursing the United States for costs of administration of Part I of the Act, $53.35 per annum.

(D) The terms and conditions of the Act, which it has been found above to be in the public interest to waive, are hereby excluded from this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

CITY OF NORWICH DEPARTMENT OF PUBLIC UTILITIES, PROJECT NO. 2508

ORDER ISSUING LICENSE (MINOR)

(Issued April 15, 1965)

Application was filed on March 15, 1965 by City of Norwich Department of Public Utilities (Applicant) of Norwich, Connecticut, for a license under Section 4(e) of the Federal Power Act (Act) for proposed Project No. 2508, known as the Tenth Street Hydro Station, located on the Shetucket River, in New London County, Connecticut. No lands of the United States are affected by the project.

The dam which the proposed project will utilize, known as the Greenville Dam, was constructed in 1888 and major repairs were made thereto in 1915. This dam was not included in the application for license for Project No. 2508 and we are not including it under this license. The dam was included in an application for license filed by Applicant for constructed Project No. 2441 on the Shetucket River since the Greenville Dam is and has been utilized by that project. By our order of even issuance date, we are issuing a license for Project No. 2441, *supra*, p. 801.

In our license order relating to Applicant's constructed Project No. 2441, we found that the Shetucket River is a navigable water of the United States from its mouth at least up to the Greenville Dam, and that full discharge from the power plant of Project No. 2441 is capable of fluctuating the Shetucket River below the powerhouse as much as a foot or two. The full discharge from the power plant of proposed Project No. 2508 would be capable of fluctuating the Shetucket River to even a greater extent than the discharge from the existing Project No. 2441 since the latter project has a greater hydraulic capacity than Project No. 2441. As stated above, Project No. 2508 utilizes water from the Greenville Dam.

The Secretary of the Army and the Chief of Engineers have reported that the plans of the project structures affecting navigation are satisfactory insofar as the interest of navigation is concerned.

The Department of the Interior was invited to report on the application, but to date no report has been received. However, the Department has informed our staff orally that the report has been mailed and recommends for inclusion in any license for the project a special condition concerning fish passage facilities similar to the condition recommended by the Department in reporting on Applicant's application for license for Project No. 2441.

The Department of Health, Education, and Welfare has advised that the project is not expected to have any adverse effects on water supply, water pollution control or vector control.

By Article 13 herein we are requiring Applicant to cooperate with State, local agencies and individuals in the interest of recreation in connection with the use of project lands and waters by the public and that it should report the result of such cooperation and development to the Commission at six-year intervals from the date of its license.

The Commission finds:

(1) The project affects navigable waters of the United States.

(2) Applicant is a municipal corporation organized under the laws of the State of Connecticut, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the proposed project.

(3) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) The proposed project will not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the proposed project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the proposed project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 1867 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the proposed project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(7) It will be in the public interest to waive pursuant to Section 10(i) of the Act the terms and conditions contained in the following sections of Part I of the Act:

Section 4(b), except the second sentence thereof; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 15; 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

The Commission orders:

(A) This license is hereby issued to City of Norwich Department of Public Utilities (Licensee) of Norwich, Connecticut, under Sections 4(e) and 10(i) of the Federal Power Act (Act), for a period effective as of the date of issuance of this license and terminating December 31, 1993, for the construction, operation, and maintenance of the Tenth Street Hydro Station Project No. 2508, located on the Shetucket River, a navigable water of the United States, in New London

County, Connecticut, subject to the terms and conditions of the Act insofar as not expressly waived herein, which Act is incorporated herein by reference as a part of this license and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2508 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined.

(ii) (a) a reinforced concrete flume approximately 30 feet wide, 15 feet deep, and 80 feet long;

(b) a turbine and generator at the end of the flume with a concrete structure approximately 45 feet by 23 feet. The total installed capacity of the project is 1867 horsepower.

(iii) all other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, and all rights and interests, the possession of which is necessary or appropriate in the maintenance and operation of the project.

(C) This license is also subject to the following terms and conditions designated as Article 1 through 15:

Article 1. The project shall be subject to all the provisions, terms and conditions of the license.

Article 2. Except when emergency shall require for the protection of life, health, or property, no substantial alteration or addition shall be made to any dam or other project works under the license without the prior approval of the Commission; and any emergency alteration or addition so made shall thereafter be subject to such modification and change as the Commission may direct.

Article 3. The project, including its operation and maintenance and any work incident to additions or alterations authorized by the Commission shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him such information as he may require concerning the operation and maintenance of the project, and of any such alteration thereof, and shall notify him of the date upon which work with respect to any alteration will begin, and as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. Licensee shall submit to said representative a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of any such alterations to the project. Construction of said alterations or any feature thereof shall not be initiated until the program of inspection for the alterations or any feature thereof has been approved by said representative. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties.

Article 4. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and recreational purposes, including fishing and hunting, and shall allow to a reasonable extent for such purposes the construction of access roads, wharves, landings, and other facilities on its lands the occupancy of which may in appropriate circumstances be subject to payment of rent to the Licensee in a reasonable amount: Provided that the Licensee may reserve from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property and provided further, that the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities. These facilities are in addition to the facilities that the Licensee may construct and maintain as required by the license.

Article 5. Insofar as any material is dredged or excavated in the prosecution of any work authorized under the license, or in the maintenance of the project, such material shall be removed and deposited so it will not interfere with navigation, and will be to the satisfaction of the District Engineer, Department of the Army, in charge of the locality.

Article 6. The United States specifically retains and safeguards the right to use water in such amount, to be determined by the Secretary of the Army, as may be necessary for the purpose of navigation on the navigable waterway affected; and the operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Secretary of the Army may prescribe in the interest of navigation, and as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes; and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Secretary of the Army may prescribe in the interest of navigation, or as the Commission may prescribe for the other purposes hereinbefore mentioned.

Article 7. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of Licensee's lands and interests in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing the Licensee shall modify the project operation as may be prescribed by the Commission, reasonably consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provision of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligations under this license.

Article 8. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without replacement, or shall abandon or discontinue good faith operation of the project for a period of three years, or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address to the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license, and not less than 90 days after public notice may in its discretion terminate the license.

Article 9. Upon abandonment of the project the Licensee shall remove all buildings, equipment and power lines to a condition satisfactory to the Commission's authorized representative and shall fulfill such other obligations under the license as the Commission may prescribe.

Article 10. The right of the Licensee and of its transferees and successors to use or occupy navigable waters of the United States under the license for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless a new license is issued pursuant to the then existing laws and regulations.

Article 11. The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressely waived in the license.

Article 12. The Licensee shall, for the conservation, and development of fish resources, construct, maintain, and operate, or arrange for construction, maintenance and operation of such fish passage and protective facilities and comply with such reasonable modifications of project structures and operation as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the Connecticut State Board of Fisheries and Game, after notice and opportunity for hearing and upon findings based on substantial evidence that such facilities and modifications are necessary and desirable, reasonably consistent with the primary purpose of the project, and consistent with the provisions of the Act.

Article 13. Licensee shall cooperate with State and local agencies and individuals in the development and maintenance of access areas and roads and such other facilities necessary for full recreational utilization by the public of project lands and waters, consistent with the terms of the license and the operation of the project. At the end of six (6) years from the date of issuance of this license and every sixth year thereafter, licensee shall advise the Commission of the results of cooperation with State and local agencies and of further recreation development at the project.

Article 14. The Licensee shall pay to the United States the following annual charge:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, $100.00 per annum.

Article 15. The Licensee shall commence construction of the project within 6 months from the effective date of this license, shall thereafter with due diligence prosecute such construction, and shall complete the project and place it in operation on or before November 30, 1967.

(D) The terms and conditions of the Act, which it has been found above to be in the public interest to waive, are hereby excluded from this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CLEGG & HUNT (OPERATOR), ET AL., DOCKET NO. RI60-405

ORDER REJECTING OFFER OF SETTLEMENT

(Issued April 16, 1965)

Clegg & Hunt (Operator), *et al.*, (C&H) filed an offer of settlement in the above-docketed proceeding which we now have before us for consideration. The offer relates to a sale of natural gas by C&H to Union Texas Petroleum (Union) in the Marrs McLean and Gilbert Woods Fields, Jefferson County, Texas (Texas Railroad Commission District No. 3). Under its FPC Gas Rate Schedule No. 5, C&H filed a proposed increased rate of 17.38982¢ per Mcf of gas at 14.65 psia for the subject sale, which proposed increased rate was suspended by order of the Commission, and subsequently made effective, subject to refund, upon motion of C&H filed in accordance with the applicable provisions of the Natural Gas Act.

C&H now proposes a life-of-contract settlement rate of 15.0¢ per Mcf of natural gas under the subject rate schedule, and to eliminate the price redetermination and periodic price escalation clauses contained therein. Additionally, it would refund the monies collected subject to refund in excess of the proposed settlement rate. It reserves only the right to file for three-fourths reimbursement of any possible tax increase until the contract expires in December, 1976. No protest or objection has been filed to the proposed settlement.

The natural gas sold by C&H to Union is gathered and processed by Union, along with other volumes purchased by Union in the area, prior to sale by Union to Texas Eastern Transmission Corporation. We have considered offers of settlement similar to C&H's in other instances where the gas is gathered and processed by the purchaser prior to ultimate sale to a natural gas pipeline company for transmission in interstate commerce, and have rejected the same because we consider the area price levels set forth in the Statement of General Policy No. 61-1, as amended (18 CFR, Chapter I, Part 2, Section 2.56) to be applicable to the sale of residue gas after processing, *Foster Petroleum Corporation*, Docket Nos. RI64-17 and RI64-24, 30 FPC 672; *H. N. Burnett*, Docket No. RI64-334, 30 FPC 1384-A (order issued November 22, 1963) and *H. F. Sears*, Docket Nos. G-10494 and G-10752, 31 FPC 585. Therefore, we shall reject the offer of settlement filed by C&H herein.

The Commission finds:

It is necessary and proper in carrying out the provisions of the Natural Gas Act and the Regulations thereunder to reject the offer of settlement filed by C&H with the Commission in this proceeding.

The Commission orders:

The offer of settlement filed by C&H in this proceeding is hereby rejected.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

WILLARD ECKERT, D/B/A ECKERT GAS COMPANY, DOCKET NO. CP65-231; GRAINVILLE GAS COOPERATIVE, DOCKET NO. CP65-230

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTIONS OF FACILITIES AND SALES OF NATURAL GAS

(Issued April 16, 1965)

On December 30, 1964, Willard Eckert, d.b.a. Eckert Gas Company (Eckert), filed in Docket No. CP65-231 an application pursuant to Section 7(a) of the Natural Gas Act, for an order of the Commission directing Cities Service Gas Company (Cities) to establish physical connection of its natural gas transmission facilities with the distribution facilities of Applicant, and to sell and deliver natural gas to Eckert for resale and distribution in the community of Peckham, Oklahoma, all as more fully set forth in the application on file with the Commission.

The estimated volumes of natural gas to meet Eckert's annual and peak day requirements for each of the initial three years of operations are stated to be 7,000 Mcf and 478 Mcf, respectively.

On January 11, 1965, Grainville Gas Cooperative (Grainville) filed in Docket No. CP65–230 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Cities to establish physical connection of its natural gas transmission facilities with the distribution facilities of Applicant, and to sell and deliver natural gas to Grainville for resale and distribution in the community of Grainville, all as more fully set forth in the application on file with the Commission.

The estimated volumes of natural gas to meet Grainville's annual and peak day requirements for each of the initial three years of operations are stated to be 2,000 Mcf and 125 Mcf, respectively.

The communities of Peckham and Grainville have heretofore been served from another source of supply. On August 21, 1964, Cities agreed to provide the service and advised the Commission pursuant to Section 157.22 of the Commission's regulations of its intent to install metering and regulating facilities for the sale of natural gas to these Applicants on an emergency basis. Such facilities were completed on September 3, 1964.

The total cost of facilities for Eckert is $3,777 and was paid out of personal funds of Mr. Willard Eckert; the cost for Grainville's facilities are $2,150 and have been financed by advances from individual members, to be reimbursed by issuing stock therefor.

On February 15, 1965, Cities filed letters advising that it has no objection to the service requested herein.

Due notice of the filing of the applications and opportunity for hearing thereon has been given by publication in the Federal Register on February 17, 1965 (30 F.R. 2166). No protest or petition to intervene has been filed in these proceedings.

The Commission finds:

(1) Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G–298 (4 FPC 471).

(2) Applicant, Willard Eckert, d.b.a. Eckert Gas Company, an individual residing in Blackwell, Oklahoma, is operating a gas distribution system within the local laws and the laws and regulations of the State of Oklahoma.

(3) Applicant, Grainville Gas Cooperative, is a non-profit corporation under the laws of the State of Oklahoma. It is operating within local laws and regulations and within the laws and regulations of the State of Oklahoma.

(4) It is necessary and desirable in the public interest that Cities be directed to establish physical connections of its gas transmission system with the existing facilities of Applicants, Eckert and Grainville, and to sell and deliver the volumes of natural gas, all as hereinbefore described and as more fully described in the applications in this proceeding.

(5) The requirement that Cities serve Eckert and Grainville, as proposed, will not place any undue burden upon Cities nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Cities Service Gas Company be and it is hereby directed to establish physical connection of its natural gas transmission system with the respective facilities of Eckert and Grainville and to sell and deliver natural gas to Eckert and Grainville, as hereinbefore described, all as more fully described in the applications filed herein.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP65-259

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 16, 1965)

On March 1, 1965, El Paso Natural Gas Company (Applicant) filed in Docket No. CP65-259 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and the sale and delivery of natural gas to City of Naturita, Colorado (Naturita) for resale and distribution in said city and environs, all as more fully set forth in the application in this proceeding.

Specifically, Applicant proposes to construct and operate a sales measuring and regulating station, together with necessary appurtenances, located adjacent to its Northwest Division Uravan-Nucla lateral in Montrose County, Colorado. The total estimated cost of Applicant's proposed facilities is $3,800, which cost will be financed with current working funds.

The estimated third-year peak day and annual requirements for Naturita are 390 Mcf and 43,020 Mcf, respectively. Applicant and Naturita have entered into a service agreement, dated January 26, 1965, under Applicant's firm Rate Schedule GS-1 providing for the proposed service.

The application shows that Naturita will construct and operate a 3½-inch and 2⅜-inch transmission line approximately 3.6 miles in length and the necessary distribution facilities for said city. The estimated cost of Naturita's facilities is $125,000.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 15, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 11, 1944, in Docket No. G-288 (4 FPC 486).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, El Paso Natural Gas Company, to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described, in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (a), (b), (c)(1), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the proposed sale and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 9 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

KANSAS-COLORADO UTILITIES, INC., DOCKET NO. CP65-248

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 16, 1965)

On February 23, 1963, Kansas-Colorado Utilities, Inc. (Applicant) filed in Docket No. CP63-248 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of natural gas facilities, all as more fully set forth in the application on file with the Commission.

Applicant proposes to construct and operate approximately 20 miles of 4-inch pipeline extending westwardly from a point of connection with Applicant's 6-inch Hugoton-Lamar main line in Hamilton County, Kansas, to a point in Prowers County, Colorado. Applicant also proposes to install a check meter at the interconnection of its 6-inch line with the proposed 4-inch line.

The proposed facilities will be used for the sale of natural gas to Plateau Natural Gas Company (Plateau) for resale for irrigational purposes under Applicant's existing Rate Schedule G-1. There will be no increase in contract demand. Estimated peak day and annual volumes of gas to be delivered through the subject facilities are 3,483 and 488,070, respectively.

Total estimated cost of Applicant's proposed construction is about $130,000, and will be financed with cash on hand or with funds provided by Plateau, parent company of Applicant.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 15, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Kansas-Colorado Utilities, Inc., a Kansas corporation having its principal place of business in Colorado Springs, Colorado, is a "natural-gas company" as heretofore found by the Commission in its order of December 8, 1958, in Docket No. G–15991 (20 FPC 793).

(2) The facilities heretofore described, as more fully described in the application in this proceeding, are to be used for the transportation, sale and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Kansas-Colorado, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Kansas-Colorado's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Kansas-Colorado Utilities, Inc., to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, all as more fully set forth in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Kansas-Colorado's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in operation, as provided by paragraph (b) of Section 157.20 above mentioned, within six months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP65–71

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 16, 1965)

On September 14, 1964, Panhandle Eastern Pipe Line Company (Applicant) filed in Docket No. CP65–71 an application, as supplemented on November 6, 1964 and February 1, 1965, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the acquisition and operation of natural gas facilities in Parke County, Indiana, all as more fully set forth in the application on file with the Commission.

Applicant proposes to acquire and operate approximately 5.7 miles of 4-inch line, from Applicant's main line measuring and regulating station to the Mecca, Indiana, plant of American Vitrified Products Company (American), all in Parke County, Indiana.

The line was originally installed by Clay City Pipe Company(Clay City) to serve the plant. Funds were loaned by Applicant to Clay City, pursuant to an agreement giving Applicant the option to purchase the line at cost. Clay City sold the plant to American, and American has asked Applicant to exercise its option to purchase the line, thus obviating the necessity of its operation by American. No change in service is proposed.

In Docket No. G-1723 (11 FPC 661, 665 and 666) Applicant was authorized, among other things, to construct and operate a measuring and regulating station on its main pipeline in Parke County, Indiana, together with a meter or meters and such other equipment as may be necessary to measure the proposed deliveries to be made up to 1,540 Mcf per day of natural gas to Clay City's Mecca plant for a period of three years.

Applicant in requesting authority to purchase and operate the above-described pipeline also seeks authorization for the delivery of the above quantity of gas and for permanent operation of all the necessary facilities to render the service to American.

The cost to Applicant of the subject 4-inch line is stated to be $103,443.74, to be defrayed by cancelling the promissory note held by Applicant in that sum. Clay City had made no payments nor has any depreciation been taken.

After due notice, no petition to intervene, notice of intervention, or protest to the granting of the applications has been filed.

At a hearing held on April 15, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications, as supplemented, and exhibits, submitted in support of the authorizations sought, and upon consideration of the record,

The Commission finds:

(1) Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G-254 (4 FPC 1081).

(2) The proposed acquisition and operation of facilities, as hereinbefore described and as more fully set forth in the application, as supplemented, and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The delivery of up to 1,540 Mcf per day to American, and the operation of the measuring and regulating station on its main pipeline in Parke County, Indiana, together with a meter or meters and such other equipment as may be necessary to measure the proposed deliveries of such gas to American, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The aforesaid delivery of natural gas and acquisition and operation of facilities are required by the public convenience and necessity, and the certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(6) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon the Applicant's compliance with all applicable Commission Regulations under the Natural Gas

Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (d), and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant authorizing the acquisition and operation of facilities and the delivery of natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued hereby is granted on the express condition that the interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder is hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (d), and (e) of Section 157.20 of such Regulations.

(D) Pursuant to Section 155 of the Regulations under the Natural Gas Act, Panhandle is hereby required to file, within 20 days, the letter agreement between Panhandle and Clay City dated February 23, 1961, and the letter agreement between Panhandle and American Vitrified dated December 11, 1963, as supplements and/or amendments to the original industrial contract.

(E) The acquisition authorized in paragraph (A) above shall be consummated and the facilities placed in actual operation as provided by paragraph (b) of Section 157.20 of the Regulations under the Natural Gas Act within 30 days from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP65-246

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 16, 1965)

On February 19, 1965, Tennessee Gas Transmission Company (Applicant) filed in Docket No. CP65-246 an application pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(b) of the Regulations under the Act, for a certificate of public convenience and necessity authorizing the construction during the calendar year 1965 and the operation of miscellaneous natural gas gathering facilities necessary to take into its certificated main pipeline system natural gas which will be purchased from producers thereof in the general area of Applicant's existing transmission system, all as more fully set forth in the application in this proceeding.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

The total cost of such facilities is not to exceed a maximum of $2,000,000, with no single project to exceed a cost of $500,000, which cost Applicant proposes to finance from general funds or from revolving credit.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 15, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued July 15, 1947, in Docket No. G–910 (6 FPC 777).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Subparagraph (3) of Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1965 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $2,000,000, with no single project to exceed a cost of $500,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Tennessee Gas Transmission Company, to construct during the calendar year 1965, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by pargraph (A) above a statement in compliance with Subparagraph (3) of Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1965, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $2,000,000, with no single project to exceed a cost of $500,000.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

TEXAS GAS TRANSMISSION CORPORATION, TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP65–232; TEXAS GAS EXPLORATION CORPORATION, DOCKET NO. CI64–739

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF SERVICE AND FACILITIES AND TERMINATING TEMPORARY CERTIFICATES

(Issued April 16, 1965)

On February 2, 1965, Texas Gas Transmission Corporation (Texas Gas) and Transcontinental Gas Pipe Line Corporation (Transco) filed in Docket No. CP65–232 a joint application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon the exchange of natural gas, all as more fully set forth in the application.

On the same date, Texas Gas Exploration Corporation (Texas Exploration) filed in Docket No. CI64–739 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon the sale of natural gas and the facilities used in connection therewith, all as more fully set forth in the application.

The above filings are related, and involve a transaction whereby natural gas sold by Texas Exploration to its parent, Texas Gas, was received by Transco in exchange for equivalent volumes delivered by Transco to Texas Gas.

Texas Exploration received a temporary authorization for the sale of up to 1,000 Mcf of natural gas per day to Texas Gas on January 9, 1964, in Docket No. CI64–739. Texas Gas and Transco received temporary authorization for the exchange of up to 1,000 Mcf on the same date, January 9, 1964, in Docket No. CP64–147.

The proposed abandonment is being sought due to the failure of production of gas on the acreage involved, and the gas sales contract dated December 20, 1963, between Texas Gas and Texas Exploration has been terminated by letter agreement dated January 27, 1965, which has been filed as a notice of cancellation of Texas Exploration's related rate schedule.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the applications has been filed.

At a hearing held on April 15, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicants, Texas Gas Transmission Corporation, Transcontinental Gas Pipe Line Corporation, and Texas Gas Exploration Corporation, are all "natural-gas companies" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The service and facilities to be abandoned as hereinbefore described, as more fully described in the applications in this proceeding are subject to the jurisdiction of the Commission and their abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid service and facilities is permitted by the public convenience and necessity and approval therefor should be granted as hereinafter ordered and conditioned.

(4) The permission and approval granted hereinafter should be conditioned upon cancellation by Texas Gas and Transco of their Rate Schedules Nos. X–31 and X–37 respectively.

The Commission orders:

(A) Permission for and approval of the abandonment by Applicants of the service and facilities hereinbefore described, as more fully described in the applications in this proceeding, be and the same are hereby granted.

(B) The temporary certificates issued January 9, 1964, in Docket Nos. CI64–739 and CP64–147 be and the same are hereby terminated.

(C) Notice of cancellation dated January 27, 1965, is designated as Supplement No. 2 to Texas Gas Exploration Corporation FPC Gas Rate Schedule No. 11, and is hereby accepted for filing effective on the date on which this order issues.

(D) The permission and approval granted herein by paragraph (A) above are hereby conditioned upon cancellation by Texas Gas and Transco of their Rate Schedules Nos. X–31 and X–37 respectively.

OPINION NO. 449–A

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP63–222

MEMORANDUM OPINION AND ORDER DENYING APPLICATIONS FOR REHEARING

(Issued April 16, 1965)

Syllabus

1. Lead-in line from pipeline is integral part of refinery facilities and as plant facility does not require a certificate. P. 819.
2. Should it be determined that continuance of interruptible service was so non-remunerative to pipeline as to be contrary to public interest, ample authority exists under Section 5(a) to effect adequate remedy. P. 819.
3. Instant authorization clearly has applicability only where there has been no direct producer sale and where producer proposes to use its own gas. P. 820.
4. Commission *denies* application for rehearing.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

By Opinion No. 449 and order issued February 17, 1965, 33 FPC 237, we granted a certificate under Sections 7(c) and (e) of the Natural Gas Act authorizing Transcontinental Gas Pipe Line Corporation to transport natural gas for Texaco Inc. from producing fields in the Texas-Louisiana Gulf Coast area to the producer's Eagle Point refinery at Westville, New Jersey. Texaco will use the gas solely in its refinery operations, none being resold. The issuance of the certificate was opposed by a group of seven gas distribution companies and by the Board of Public Utility Commissioners of the State of New Jersey, each of which had requested and was granted intervention in the proceeding.

On March 17, 1965, a joint petition for rehearing of our Opinion and order was filed by the same gas distributors.[1] The previous day, March 16, 1965, the New Jersey Board of Public Utility Commissioners also filed for rehearing, adopting the joint petition being filed by the distribution companies. Most of the issues argued in the rehearing application are simply restatements, often in similar terms, of arguments previously advanced by these parties and adequately covered in the examiner's decision and in the Opinion. However, the Interveners make four contentions which we shall discuss further.

1. The Interveners contend that Texaco should be required to secure a transportation certificate for the operation of the approximately 4½ miles of lead-in line through which the gas will flow after it leaves Transco's line and is redelivered to Texaco, and the refinery grounds proper. They refer to a requirement imposed upon Public Service Electric and Gas Company in Opinion No. 231[2] requiring it to obtain a certificate to construct an 11.3 mile lateral line needed to enable it to receive natural gas into its gas plant.

In our opinion Texaco need not apply for and secure a certificate for the reason that the lead-in line is an integral part of the refinery facilities. The simple fact that the point of delivery will be a relatively short distance from the refinery grounds and that the line runs through public and private lands is not controlling. Texaco has used the line for refinery purposes ever since its construction and it will continue to be used only for these purposes. Once the gas enters the Texaco lateral it will be able to be utilized only in the plant operations. Under no circumstances could Texaco sell the gas. Accordingly, Texaco's lateral is held to be a part of the plant facility and does not, therefore, require a certificate.

2. Interveners also contend that the Commission will be unable to regulate effectively the interruptible rate once the certificate is in effect, even though it may subsequently be determined that the rate is discriminatory and unduly preferential. This same argument was made in the exceptions filed to the initial decision. Under Section 5(a) of the Act, the Commission is always free, whether on complaint or on its own motion, to investigate the rates charged by any natural-gas company in connection with any transportation or sale of natural gas subject to the jurisdiction of the Commission and, if found to be unreasonable, to determine the just and reasonable rate thereafter to be in effect. Should it ever be determined that the continuance of the interruptible service was so nonremunerative to Transco as to be contrary to the public interest, ample authority exists under Section 5(a), as clarified in *F.P.C.* v. *Sierra Pacific Power Co.*, 350 U.S. 348 (1956), to effect an adequate remedy.

Parenthetically, we note that the possibility of the interruptible rate ever becoming noncompensatory to Transco is remote. The interruptible rate charged is only 0.04 cent per Mcf less than the rate for firm service at a 100 percent load factor and, further, only about 2 cents of the total 22 cents per Mcf charged represents the variable cost of rendering the service. We agree with the Examiner, for these and other reasons cited, that adequate protection for Transco's consumers does not require a more detailed determination of the just and reasonable nature of the proposed rates.

3. The Interveners also argue that a field sale is involved in that some of the gas to be transported by Transco will be gas purchased by Texaco from other

---

[1] City Gas Company of New Jersey, Elizabethtown Consolidated Gas Company, New Jersey Natural Gas Company, Philadelphia Electric Company, Philadelphia Gas Works Division of the United Gas Improvement Company, Public Service Electric and Gas Company, and South Jersey Gas Company.

[2] *Texas Eastern Transmission Corp., et al.*, Docket No. G-1693, et al., 11 FPC 211, 225.

producers. As noted at a number of points in the initial decision, which we adopted, Texaco intends to have transported only its own produced natural gas. The gas will be entirely from leases owned and operated by Texaco in Texas and Louisiana. The Examiner's decision, and our order authorizing the service, clearly has applicability only in a situation, as here, "where there has been no direct producer sale in the field" and involving "a proposal by a bona fide producer to use its own gas which was produced in the normal course of its business."

4. Public Service, pointing to Section 1.18(e) of the Rules of Practice and Procedure which permits the filing of settlement offers "at any time," objects to our characterization of the settlement offer filed by it on November 18, 1964, as an attempt by it to put on a new case almost a full year after the record had been closed. It also takes issue with our questioning of the reliability of the offer of settlement.

In questioning the reliability of Public Service's offer of settlement, we were referring only to the legality of the special contract which would be involved in the settlement proposal. We did not intend to express any doubts, nor have we any, as to the good faith of Public Service in submitting its offer. As noted in the initial decision, there is some question whether Public Service could lawfully file a special contract with the Board of Public Utility Commissioners for service to one customer without offering the same rate to other customers in the same circumstances. Although the State agency adopted both the exceptions and application for rehearing of the distributor interveners, it has at no time stated that the contract proposed would be lawful if applicable only to the service to Texaco. Conversely, there was no indication in the offer that Public Service was proposing a new rate schedule of general applicability. In essence, then, it can best be said that a question existed whether the rate offered in the settlement was or was not unduly preferential, and we were giving Public Service the benefit of the doubt.

Public Service is correct in pointing out that a settlement offer may be filed at any point in the proceeding. However, Texaco, an indispensable party, stated that it was not agreeable to the terms of the proposed settlement. The Commission therefore could not accept the offer of Public Service. Since Public Service continues to press for acceptance of the terms proposed in the offer, we can only conclude that it was seeking to put on a new case.

Moreover, a consideration of the settlement proposal indicates that under the terms thereof the supply of natural gas provided Texaco would not be at a price which would justify its conversion of the Eagle Point refinery from liquid fuel. As computed by Texaco in its answer opposing the offer, Public Service is proposing rates potentially as high as 53.2 cents per Mcf for firm service and 44.4 cents per Mcf for interruptible gas. Yet, as the record shows, as long ago as 1951 Public Service was advised that in order for Texaco to be induced to effect the conversion the price would have to be equivalent to 5 cents per barrel below the price for Bunker-C oil. The standard price for this fuel was found by the Examiner to be $2.35 per barrel, which is equivalent to approximately 36 cents per Mcf. It is apparent, therefore, as stated by Texaco, that under no circumstances would the present offer, even allowing for minor adjustments, be sufficient to induce it to contract with Public Service. Public Service has had numerous occasions for a period of over 10 years within which to effect an agreement with Texaco. Although the present offer seems to be more favorable to Texaco than any previously made, it nevertheless provides no basis for our finding that any purpose would be served either by remanding the case for additional consideration or by ordering a settlement conference to be convened.

The Commission finds:

The assignments of error and grounds for rehearing set forth in the applications for rehearing filed in this proceeding present no facts or legal principles which would warrant any change or modification in the Commission's Opinion No. 449 and accompanying order.

The Commission orders:

The applications for rehearing filed by the New Jersey Board of Public Utility Commissioners on March 16, 1965, and jointly by the distribution company interveners on March 17, 1965, are hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP64-96; CITY OF WASHINGTON, GEORGIA, DOCKET NO. CP64-304

ORDER VACATING ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS AND AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 16, 1965)

On January 22, 1965, Transcontinental Gas Pipe Line Corporation (Transco) filed in Docket No. CP64-96 an application pursuant to Section 7(c) of the Natural Gas Act to amend the order heretofore issued in said docket by authorizing Transco to sell and deliver an additional 1,643 Mcf of gas per day to Atlanta Gas Light Company (Atlanta) for resale and distribution in the City of Washington, the Town of Tignall, and environs, Wilkes County, Georgia all as more fully set forth in the application to amend. The Commission has heretofore issued an order in Docket No. CP64-304, 32 FPC 731, directing Transco to connect its facilities with a distribution system which the City of Washington has proposed to construct and operate and to sell and deliver to the City of Washington up to 1,643 Mcf of gas for resale and distribution. Atlanta proposes to sell and distribute gas in the same area heretofore proposed to be served by the City of Washington. On February 16, 1965, the City of Washington filed a motion for the Commission to vacate the order heretofore issued in Docket No. CP64-304 directing the physical connection of facilities and sale of natural gas.

After due notice no petition to intervene, notice of intervention, or protest to the granting of the application to amend filed in Docket No. CP64-96 has been received.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the order issued in Docket No. CP64-304 directing physical connection of facilities and sale of natural gas should be vacated and that the order issuing a certificate in Docket No. CP64-96 should be amended as hereinafter ordered.

The Commission orders:

(A) The order issued in Docket No. CP64-304 directing physical connection of facilities and sale of natural gas be and the same is hereby vacated.

(B) The order issuing a certificate to Transco in Docket No. CP64-96 be and the same is hereby amended by authorizing Transco to sell and deliver up to an additional 1,643 Mcf of natural gas per day to Atlanta for resale and distribution in the City of Washington, Town of Tignall, and environs, Wilkes County, Georgia, and to construct and operate the necessary tap, meter, and regulator facilities therefor; and in all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. RP65–46

ORDER ACCEPTING PROPOSAL TO REDUCE RATES AND MAKE REFUNDS

(Issued April 19, 1965)

On March 1, 1965, Michigan Wisconsin Pipe Line Company (Michigan Wisconsin), tendered a proposal to reduce its rates and charges effective January 1, 1965, by approximately $460,000 per year. The proposed reduction is the net effect of a decrease in Michigan Wisconsin's cost of gas purchased from Midwestern Gas Transmission Company effective as of December 1, 1964, the decrease in the Federal income tax effective as of January 1, 1965, and the increase in the purchase gas cost from Phillips Petroleum Company (Phillips) which was filed on February 5, 1965.[1]

Michigan Wisconsin proposes to (1) file revised tariff sheets to its presently effective FPC Gas Tariff to reflect a reduction of three (3) cents per Mcf and in the demand component of its ACQ–1 rate schedule and a reduction of one mil (0.1 cents) per Mcf in its SGS–1 and development rates; (2) to refund to its customers the amount of $93,220 per month for the period beginning December 1, 1964, until the date upon which Phillips proposed increased rates become effective subject to refund; and (3) to expand the refund and rate reduction obligations set out in Opinion No. 387, 29 FPC 932, to include any refunds and reductions which may hereafter be required by Commission order in the proceedings concerning the Phillips rate increases referred to above.

Upon due notice given, no objection or protests to Michigan Wisconsin's proposal have been received.

The Commission finds:

(1) The proposal filed herein on March 1, 1965, by Michigan Wisconsin is appropriate and in the public interest in carrying out the Natural Gas Act, and should be approved and made effective subject to the terms and conditions herein provided and ordered.

(2) Good cause exists for the Commission to waive its applicable rules and regulations under the Natural Gas Act in order that the tariff sheets herein required to be filed may become effective as of January 1, 1965, as hereinafter ordered.

The Commission orders:

(A) The aforementioned proposal filed by Michigan Wisconsin on March 1, 1965, is approved subject to the following terms and conditions.

(B) Within thirty (30) days from the date of issuance of this order, Michigan Wisconsin shall file revised tariff sheets, subject to the approval of the Commission, to be effective as of January 1, 1965, reflecting the terms and conditions set out in the proposal filed on March 1, 1965, and approved by paragraph (A) above.

(C) Within thirty (30) days from the date of issuance of this order, Michigan Wisconsin shall refund to its customers the difference between the revenues actually collected under the rates currently effective and the revenues which would have been collected under the rates set out in the proposal, for all gas delivered to its customers for the period from January 1, 1965 to the date on which the refunds hereby required are made, plus $93,220 per month for the period from December 1, 1964 to the date of the refund.

---

[1] By Commission order issued March 5, 1965, the tendered increases were suspended until August 8, 1965, in Docket Nos. RI65–626 and RI65–627.

(D) For each month beginning with the date upon which the refund required by paragraph (C) above is made and ending with the date on which the aforementioned Phillips' increased rates become effective subject to refund, Michigan Wisconsin shall credit each customer's monthly bill with the proportionate share of $93,220.

(E) Within 20 days of making the refunds required by paragraph (C) above, Michigan Wisconsin shall report to the Commission, in writing and under oath, the amount of the refunds made to each customer together with a computation showing the manner in which such refunds were determined, and concurrently therewith, shall serve a copy of such report upon each of its customers and upon interested State Commissions. Within 20 days after final crediting of customers' bills as required by paragraph (D) above, Michigan Wisconsin shall submit a similar report thereon and shall serve such report as herein provided.

(F) Upon compliance with the terms of the proposal and this order, the proceeding in Docket No. RP65-46 shall be considered terminated.

(G) This order, except as herein specifically set forth, shall not be construed to change or otherwise affect the existing obligations of Michigan Wisconsin to make refunds and rate reductions under orders heretofore issued by the Commission in proceedings involving Michigan Wisconsin; and further, this order is without prejudice to any findings or orders which have been made or which may hereafter be made by the Commission, and is without prejudice to any claims or contentions which may be made by the Commission, Michigan Wisconsin, the Commission Staff, or any other party affected by this order, in any proceeding now pending or hereafter instituted by or against Michigan Wisconsin or any other persons or parties affected by this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP64-96; EASTERN SHORE NATURAL GAS COMPANY, DOCKET NO. CP65-193

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 19, 1965)

On December 30, 1964, Eastern Shore Natural Gas Company (Eastern Shore) filed in Docket No. CP65-193 an application as supplemented on February 9, 1965, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and the delivery of natural gas as hereinafter described and as more fully described in the application as supplemented.

Eastern Shore proposes to construct and operate 150 feet of 2-inch pipeline, a meter and a regulator to render initial firm service to Zaffere's Sally Ann

Bakery, Inc., Federalsburg, Maryland, for use in bakery ovens. Estimated peak day and annual requirements are 40 Mcf and 13,000 Mcf of gas, respectively. Estimated cost of the proposed facilities is $4,600 which will be financed from funds on hand.

Eastern Shore proposes to increase firm deliveries to the Stauffer Chemical Company, Delaware City, Delaware, from 4,600 Mcf to 5,200 Mcf of gas per day. Of the proposed increased deliveries, 200 Mcf of gas will be used in the manufacture of carbon bisulfide in the purchaser's existing plant and 400 Mcf of gas will be used for space heating and film processing in a new plant constructed nearby. The new plant will be connected to Eastern Shore's existing facilities at the expense of the purchaser.

Eastern Shore proposes to increase firm deliveries to the General Foods Corporation, Dover, Delaware, from 300 Mcf to 350 Mcf of gas per day. The additional deliveries of gas will be used to dry cocoa beans. No additional facilities are required.

Eastern Shore proposes to tap its existing 6-inch transmission line in Townsend, Delaware, to provide an additional delivery point for an existing resale customer, Chesapeake Utilities Corporation, Dover Gas Light Division. The proposed delivery point will be used to sell and deliver approximately 4,000 Mcf of gas per year to Chesapeake for resale to Townsend Grain and Feed Company for use in a grain dryer. Eastern Shore will sell the gas under the terms of its present agreement with Chesapeake and there will be no increase in contract demand.

On January 22, 1965, Transcontinental Gas Pipe Line Corporation (Transco) filed in Docket No. CP64–96 an application pursuant to Section 7(c) of the Natural Gas Act to amend the order issuing a certificate of public convenience and necessity in said docket by authorizing the sale and delivery of an additional 690 Mcf of gas per day to Eastern Shore, all as more fully described in the application to amend.

After due notice no petition to intervene, notice of intervention, or protest to the granting of the applications has been filed.

At a hearing held on April 15, 1965, the Commission received and made a part of the record in this proceeding all evidence, including the applications as supplemented and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Eastern Shore Natural Gas Company, a Delaware corporation having its principal place of business in Salisbury, Maryland, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of November 29, 1957, in Docket No. G–12200 (18 FPC 710).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in Docket No. CP65–193, are to be used in the transportation and delivery of natural gas in interstate commerce, and the construction and operation of said facilities and the transportation and delivery of natural gas by Eastern Shore are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Eastern Shore is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of facilities and the transportation of natural gas by Eastern Shore are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Eastern Shore's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the order issuing a certificate of public convenience and necessity to Transco in Docket No. CP64–96 should be amended as hereinafter ordered.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Eastern Shore to construct and operate facilities and to transport natural gas as hereinbefore described, all as more fully described in the application filed in Docket No. CP65–193, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Eastern Shore's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the deliveries of natural gas shall commence, as provided by paragraph (b) of Section 157.20 of the Regulations under the Natural Gas Act, within six months from the date on which this order issues.

(D) The certificate issued by paragraph (A) above shall not entitle the industrial customers to whom firm deliveries are authorized therein to any priorities or rights to additional gas for meeting any future increases in their requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

(E) The order issuing a certificate of public convenience and necessity in Docket No. CP64–96 to Transco be and the same is hereby amended by authorizing the construction and operation of facilities and the sale of an additional 690 Mcf of natural gas to Eastern Shore as hereinbefore described, all as more fully described in the application in this proceeding; and in all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

MOUNTAIN FUEL SUPPLY COMPANY, DOCKET NO. CP65–233

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 20, 1965)

Mountain Fuel Supply Company (Applicant), filed in Docket No. CP65–233 an application on February 4, 1965, together with a supplement thereto on March 1, 1965, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas and the construction and operation of (1) 26.5 miles of 20-inch diameter pipe from Green River, Wyoming to Crossover No. 16 near Little America, Wyoming, paralleling the existing 18-inch pipeline between these points, (2) 17.4 miles of 20-inch diameter pipe from Eaking Compressor Station (Wyoming) to Biglow Bench, paralleling the existing 18-inch pipelines between these points, and (3) 14.8 miles of 16-inch diameter pipe in two sections, 10.9 miles and 3.9 miles respectively between Morgan, Utah, and the Sunset terminus near Ogden, Utah, replacing the existing 14-inch line between these points.

The proposed facilities are required to enable Applicant to meet increased firm peak load requirements expected for the 1965-1966 winter season due to growth within its present service area and will increase the capacity of its interstate transmission system by 29,000 Mcf daily. The 16-inch replacement will complete Applicant's program of reconditioning and upgrading on its transmission line between Coalville and Ogden, Utah.

The estimated cost of Applicant's proposed construction is $2,884,000, and will be financed with funds on hand and from short-term bank loans.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 9, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence including the application, supplement and exhibits submitted in support of the authorizations sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Mountain Fuel Supply Company, a Utah corporation having its principal place of business in Salt Lake City, Utah, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 15, 1940, in Docket No. G-154 (2 FPC 288).

(2) The proposed construction and operation of facilities and transportation of natural gas by Applicant as hereinbefore described, and as more fully described in the application, supplement, and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid construction and operation of facilities and transportation of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to the Applicant in this proceeding, authorizing the construction and operation of facilities and the transportation of natural gas as more fully described in the application, supplement and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid regulations within 12 months of the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TRIBUNE OIL CORPORATION, ET AL., DOCKET NOS. G-4335, G-6279, G-13032, G-17660 AND RI60-138

ORDER CONDITIONALLY ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICES OF CHANGE, TERMINATING PROCEEDINGS, AND REQUIRING REFUNDS

(Issued April 20, 1965)

On February 15, 1965, Tribune Oil Corporation, *et al.* (Tribune) filed an offer of settlement in these proceedings pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure, and in conformity with the policy set forth in our order issued August 6, 1964, in *Jack W. Grigsby (Operator), et al.*, Docket Nos. RI61-96 and RI62-536, 32 FPC 529. The offer involves proposed increased rates for the sale of natural gas to Transcontinental Gas Pipe Line Corporation (Transco) in the Egan Field, Acadia Parish, Louisiana, under Tribune's FPC Gas Rate Schedule No. 1.[1] Each of the proposed increased rates were suspended by order of the Commission for the statutory period, were made effective by Tribune, or its predecessors, and have been charged and collected subject to refund.

Under the terms of the settlement offer, Tribune proposes to reduce its rate for the subject sale from the 23.55¢ rate now in effect subject to refund to 15.75¢ per Mcf of gas at 15.025 psia, and to make refunds of the monies collected subject to refund consistent with the procedure set forth in *Grigsby, supra*, with applicable interest thereon. Approval of the proposed settlement will result in Tribune refunding approximately $167,520, exclusive of interest, and a decrease in its annual revenues of approximately $59,420 below that which it currently charges and collects.

On March 1 and 9, 1965, Consolidated Edison Company of New York, Inc., and the United Gas Improvement Company filed their respective comments to the settlement proposal. Each agreed to the proposal, but urged that the moratorium, which Tribune had proposed to extend to January 1, 1968, be extended by order of the Commission to run 36 months from the first day of the month in which the order of the Commission approving the settlement be issued. However, in *Grigsby, supra*, we specifically provided that the filing moratorium of 36 months imposed therein run from the first day of the month in which Grigsby filed its settlement proposal. Accordingly, we shall condition our approval of Tribune's proposal to impose a filing moratorium of 36 months commencing February 1, 1965.

We note that Tribune, in its offer, proposes that it be dismissed as a respondent in the area rate proceeding AR61-2. However, as we stated in *Southwest Gas Producing Company, Inc. (Operator), et al.*, Docket No. G-16714, *et al.*, 31 FPC 192, 193:

> **All of our orders approving settlement proposals or agreements are unqualifiedly subject to final determination in area proceedings, or proceedings of a similar nature, and we will make no exception here.**

---

[1] **Tribune's two other sales are being rendered under permanent certificates at approved rates.**

That unchanged policy appertains here.

For all of the reasons set forth in our order issued July 8, 1964, in *Humble Oil & Refining Company*, Docket No. G-9287, *et al.*, 32 FPC 49, we shall require Tribune to retain the amount of refunds, with interest, ordered herein in trust until further order directing the nature of their disposition and also to submit within 45 days of this order to the Commission and to Transco a detailed report setting out the amount of refund related to the instant rate schedule, the volume of gas sold thereunder and the period covered. We shall also by separate action direct Transco within ten days from the receipt of such report to submit a report of its own setting forth whether it intends to pass on all or part of such refund amounts to its customers and the names of such customers and amounts of refund each would receive, or, if it claims the right to retain any portion of the refunds, a brief statement as to the legal or equitable basis for such claim. In the event such reports indicate that the refunds will flow through to ultimate consumers or distribution companies not subject to the Commission's jurisdiction, the Commission will authorize the release of such refund sums by Tribune (unless a state regulatory authority after notification of the sum to be made available to a company subject to its regulatory jurisdiction asks us to defer releasing the funds until it can determine their ultimate disposition). In the event a pipeline purchaser from Transco (or a pipeline customer of such a pipeline) indicates that it is asserting a claim to retain substantial refund sums the Commission will by further order prescribe the procedure for determining the relative rights to such funds of such pipeline or its customers.

We find that approval of the proposed settlement, as conditioned herein would serve the public interest.

The Commission finds:

The proposed settlement of the above-designated proceeding, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Tribune on February 15, 1965, and as herein conditioned is in the public interest and is appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed with the Commission by Tribune on February 15, 1965, is hereby approved in accordance with the provisions of this order.

(B) Tribune shall compute the difference between the rate collected subject to refund and the related settlement rate for the period such rate was collected subject to refund, to the date of this order, together with interest as specified in the above dockets to the date of this order, in accordance with the percentages set forth in Tribune's offer. Tribune shall within 45 days from the date of this order submit a report to the Commission, and serve a copy on Transco setting out the amount of refund related to the subject rate schedule (showing separately the principal and applicable interest), the basis used for such determination and the period covered.

(C) Tribune shall retain the refund amounts shown in the report required under paragraph (B) above, subject to further order of the Commission directing the disposition of those amounts.

(D) Tribune shall tender for filing on or before June 4, 1965, an executed Escrow Agreement, conditioned as set out below, accompanied by certificate showing service of a copy thereof upon Transco. Unless notified to the contrary by the Secretary within 30 days from the date of filing thereof, the Escrow Agreement shall be deemed to be satisfactory and to have been accepted for filing. The Escrow Agreement shall be entered into between Tribune and any bank or trust company used as a depositor for funds of the United States Government and the agreement shall be conditioned as follows:

(1) Tribune, the bank or trust company, and the successors and assigns of each, shall be held and formally bound unto the Federal Power Commission for the use and benefit of those entitled thereto, with respect to all amounts and the interest thereon deposited in a special escrow account, subject to such agreement, and such bank or trust company shall be bound to pay over to such person or persons as may be identified and designated by final order of the Commission and in such manner as may be therein specified, all or any portion of such deposits and the interest thereon.

(2) The bank or trust company may invest and reinvest such deposits in any short-term indebtedness of the United States or any agency thereof or in any form of obligation guaranteed by the United States which is, respectively, payable within 120 days as the said bank or trust company in the exercise of its sound discretion may select.

(3) Such bank or trust company shall be liable only for such interest as the invested funds described in Paragraph (2) above will earn and no other interest may be collected from it.

(4) Such bank or trust company shall be entitled to such compensation as is fair, reasonable and customary for its services as such, which compensation shall be paid out of the escrow account to such bank or trust company. Said bank or trust company shall likewise be entitled to reimbursement for its reasonable expenses necessarily incurred in the administration of this escrow account, which reimbursement shall be made out of the escrow account.

(5) Such bank or trust company shall report to the Secretary quarterly, certifying the amount deposited in the bank or trust company for the quarterly period.

(E) Tribune shall, over the signature of a responsible officer file with the Commission, within 30 days from the date of the issuance of this order, an original and one copy of its acceptance or rejection of the terms and conditions of this order, including specifically the requirement that it agree to a 36 month filing moratorium upon each of its presently filed rate schedules commencing February 1, 1965.

(F) Any party to the proceedings having objection to the terms of this order shall within 30 days from the date of issuance of this order set forth such objections in writing to the Commission (original and one copy) and by serving copies on the other parties.

(G) If as a result of any objections filed pursuant to paragraph (F) hereof, the Commission by subsequent order changes Tribune's duties and obligation hereunder, Tribune's acceptance of this settlement order shall not be binding on it without its express agreement.

(H) Upon compliance by Tribune with all the terms and provisions of this order, the Section 4(e) proceedings in Docket Nos. G-4335, G-6279, G-13032, G-17660, and RI60-138 shall terminate.

(I) Upon termination of the Section 4(e) proceedings set forth in Paragraph (H) above, the proceedings in Docket Nos. G-6279, G-13032, and RI60-138 shall be severed from the area rate proceeding AR61-2 without further order of the Commission, and RI60-138 shall be severed from the consolidated proceedings, Docket No. G-17613, *et al.*, Texaco Inc., et al.

(J) This order is without prejudice to any findings or orders which have been or may be made hereafter by the Commission, and is without prejudice to claims or contentions which may be made by Tribune, the Commission staff, or any affected party hereto, in any proceedings now pending, including area rate or similar proceedings, or hereafter instituted by or against Tribune or any other companies, person or parties affected by this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

HUMBLE OIL & REFINING COMPANY, G–9287, ET AL.; TENNESSEE GAS TRANSMISSION COMPANY, RP65–6; LONE STAR GAS COMPANY, RP65–10; GAS GATHERING CORPORATION, RP65–11; SOUTHERN NATURAL GAS COMPANY, RP65–13, RP65–33; NORTHERN NATURAL GAS COMPANY, RP65–14, RP65–30; UNITED GAS PIPE LINE COMPANY, RP65–15; TEXAS GAS TRANSMISSION CORPORATION, RP65–16, RP65–34; KANSAS-NEBRASKA NATURAL GAS COMPANY, INC., RP65–17; PANHANDLE EASTERN PIPE LINE COMPANY, RP65–18; COLORADO INTERSTATE GAS COMPANY, RP65–19; EL PASO NATURAL GAS COMPANY, RP65–20; CITIES SERVICE GAS COMPANY, RP65–21; UNITED FUEL GAS COMPANY, RP65–22; AMERICAN LOUISIANA PIPE LINE COMPANY, RP65–23, RP65–28; NATURAL GAS PIPELINE COMPANY OF AMERICA, RP65–25; FLORIDA GAS TRANSMISSION COMPANY, RP65–26; TEXAS EASTERN TRANSMISSION CORPORATION, RP65–27; OHIO FUEL GAS COMPANY, THE, RP65–29; TRANSCONTINENTAL GAS PIPE LINE CORPORATION, RP65–31; MISSISSIPPI RIVER FUEL CORPORATION, RP65–32

ORDER RELEASING REFUNDS IN PART

(Issued April 21, 1965)*

The Commission by order issued July 8, 1964, in *Humble Oil & Refining Company*, Docket No. G–9287, *et al.*, 32 FPC 49, approved the settlement of Humble's rate proceedings and among other things, directed Humble to retain the amounts computed to be refundable to its jurisdictional customers pending our further order with respect thereto. We therein noted that the purpose of the action taken was to assure that within the limits of our jurisdictional reach the amounts to be refunded would actually flow to those parties legally and equitably entitled thereto. As we there said, that purpose and the action taken to effectuate that purpose arises from "our duty to insure that the ultimate consumers of gas actually receive all of the benefits of our rate regulation to which they may be entitled."

Some of the pipeline customers of Humble and other pipelines purchasing gas from them in the resale chain between the producer and the ultimate consumer have an express obligation pursuant to prior Commission orders to flow-through the jurisdictional portion of any amounts to be received as a result of the Humble settlement. Other pipelines are not specifically obligated and without further action on our part would retain the amounts received unless they voluntarily flow them through to their customers.

As an aid in ascertaining which of these pipelines would assert a right to retain all or part of the amounts to be refunded by Humble, we directed Humble's pipeline customers[1] and other pipelines in the resale chain[2] to report their intended disposition of these funds.

---

*Order issued June 14, 1965, rejecting application for rehearing and denying reconsideration, 33 FPC 1263. Petition for review dismissed, *sub nom. Texas Eastern Transmission Corp.* v. *F.P.C.*, 357 F. 2d 232 (CA5–1966) and *United Fuel Gas Co.* v. *F.P.C.*, 367 F. 2d 34 (CA4–1966).

[1] "Order Requiring Report of Intended Disposition of Refunds" issued September 29, 1964, in *Humble Oil & Refining Company*, Docket No. G–9287, *et al.*, 32 FPC 873

[2] "Order Requiring Report of Intended Disposition of Refunds" issued January 5, 1965, in *Humble Oil & Refining Company*, Docket No. G–9287, *et al.*, 33 FPC 19.

Analysis of the reports filed by Natural Gas Pipeline Company of America, (RP65-7), Trunkline Gas Company (RP65-8), Mississippi River Fuel Corporation (RP65-9), and Humble Gas Transmission Company (RP65-12), indicated that, except for insignificant amounts, these companies would flow-through the jurisdictional portion of any amount they might receive from Humble. Accordingly, by order issued January 5, 1965[3] we directed Humble to release the amounts refundable to each of these companies. Analysis of the reports filed by Tennessee Gas Transmission Company (RP65-6), Lone Star Gas Company (RP65-10),[4] Northern Natural Gas Company (RP65-14), Kansas-Nebraska Natural Gas Company, Inc. (RP65-17)[5] and American Louisiana Pipe Line Company (RP65-23) and review of the existing flow-through obligations of these companies and of other pipelines in the resale chain reveals that the amounts refundable by Humble to this group of its customers will also flow-through to the limit of our jurisdictional reach. We therefore provide hereinafter for the release of funds by Humble to these pipelines and the referenced dockets are deemed closed.

The reports filed by Colorado Interstate Gas Company (RP65-19), El Paso Natural Gas Company (RP65-20), the Cities Service Gas Company (RP65-21), state that these companies would retain substantially all of the amounts which Humble might refund to them. The retention of these amounts by Humble is therefore continued pending further order of the Commission prescribing the procedure for determining the relative rights of all parties to such funds.

The reports of Southern Natural Gas Company (RP65-13), United Gas Pipe Line Company (RP65-15), Panhandle Eastern Pipe Line Company (RP65-18), and United Fuel Gas Company (RP65-22) indicate that these companies are obligated to and will flow-through only a portion of the amounts refundable by Humble and are not so obligated and would retain a remaining substantial portion. We have therefore provided that Humble release to these companies only those portions of the refundable amounts which are covered by an existing flow-through obligation and retain those amounts which our analysis shows is outside the coverage of such obligations.

The reports[6] and our analysis of the flow-through obligations of the other pipeline companies purchasing gas from Humble's immediate customers indicated that, except for amounts attributable to purchases by Florida Gas Transmission Company, Southern Natural Gas Company, and Texas Eastern Transmission Company, all substantial, jurisdictional amounts would flow-through. We therefore provide for the release of the funds which will ultimately flow-through and for the retention of amounts by the supplier of any company which denies or might deny an obligation to flow-through such amounts. Thus while Texas Gas Transmission Company (RP65-16) reports that it would flow-through substantially all of the jurisdictional portion of the refund it might receive, we herein provide that it defer its flow-through to Texas Eastern (RP65-27) which denies an obligation to further flow-through the amounts it would receive from Texas Gas.

---

[3] "Order Releasing Refunds in Part", *Humble Oil & Refining Company*, Docket No. G-9287, *et al.*, 33 FPC 18.

[4] Including the report of its pipeline customer, Natural Gas Pipeline Company of America (RP65-25).

[5] Including the report by its pipeline customer, Northern Natural Gas Company (RP65-30).

[6] Southern Natural Gas Company (RP65-33), Texas Gas Transmission Corporation (RP65-34), American Louisiana Pipe Line Company (RP65-28), Florida Gas Transmission Company (RP65-26), Texas Eastern Transmission Company (RP65-27), The Ohio Fuel Gas Company (RP65-29), Mississippi River Fuel Corporation (RP65-32).

Finally, it should be noted that the refund to one of Humble's customers, Gas Gathering Corporation, is being retained in escrow pending further order of the Commission because that company has indicated that it is in the process of filing a reduction in the rate under which it resells the gas purchased from Humble and the refund and the rate reduction filing will be disposed of together. Action on the report filed by its pipeline customer, Transcontinental Gas Pipe Line Corporation (RP65-31) is also deferred until that time.

The public interest will best be served if the amounts to be retained and not distributed at this time are limited to the precise amounts which are beyond the terms of a previously ordered flow-through obligation. To accomplish this end we have set forth with specificity the details from which these amounts may be determined. For example a customer of Humble's may be obligated to flow-through refunds received under one of Humble's rate schedules. As generally written, the customer would be obligated to flow-through an amount representing the difference between the rate level which the customer had incorporated in its cost of purchased gas for purchases under that rate schedule and Humble's settlement rate. This obligation is not terminated by Humble's filing a superseding rate increase in that rate schedule but would continue throughout Humble's refund period.[7] However the incremental amount of such an increase, *i.e.*, the segment between Humble's existing rate at time of the settlement and the level of such rate incorporated by the customer in its rates, would not be within the terms of the flow-through obligation and we have provided that the refundable amounts attributable to that increment of rate increase be retained.

We recognize the possibility that a pipeline may disagree with our conclusions regarding its flow-through obligations. We shall provide, therefore, that in such cases the disputed amounts shall be held by the recipient subject to our further order. In other instances, a pipeline may wish to voluntarily assume an obligation to flow-through the refund it would receive though it is not so obligated by prior Commission order, or a pipeline may disagree with our interpretation of its obligation and be able to show that an obligation to flow-through the refund exists. Where such conditions exist we shall provide for the release of the funds which we have herein ordered to be retained upon the filing of an assumption of an obligation to flow-through the refund or a report detailing the obligation to flow-through the refund.

The Commission orders:

(A) Humble and Empire Trust Company (Escrow Agent), the escrow agent appointed by Humble pursuant to Paragraph (H) of our order issued July 8, 1964, in *Humble Oil & Refining Company*, Docket No. G-9287, *et al.*, are jointly directed to release and pay over to Tennessee Gas Transmission Company, Lone Star Gas Company, Northern Natural Gas Company, Kansas-Nebraska Natural Gas Company, Inc. and American Louisiana Pipe Line Company, the amounts indicated to be refundable to those customers in the refund report filed by Humble on September 21, 1964, together with the net earnings of the escrow account attributable to each of these principal sums.

(B) Humble and the Escrow Agent are jointly directed to release and pay over to Southern Natural Gas Company, United Gas Pipe Line Company, Texas Gas Transmission Corporation, Panhandle Eastern Pipe Line Company, and United Fuel Gas Company the amounts indicated to be refundable to those customers in the refund report filed by Humble on September 21, 1964, together with net earnings of the escrow account attributable to each of these principal sums,

---

[7] Midwestern Gas Transmission Company, *et al.*, Docket No. G-16841, *et al.*, Opinion No. 394, issued July 12, 1963, 30 FPC 150.

except that, the Escrow Agent shall retain the following principal sums together with the associated escrow earnings:

1. That portion of the refund which is attributable to purchases by Southern Natural Gas Company prior to April 1, 1964 under Humble's Rate Schedule No. 39 and which represents the difference between rates of 16.17¢ per Mcf at 15.025 psia for Mississippi and 16.0¢ per Mcf at 15.025 psia for Louisiana and rates collected subject to refund in excess of these rates and that portion which is attributable to purchases prior to April 1, 1964 under Humble's Rate Schedule No. 126 and which represents the difference between a rate of 20.0¢ per Mcf at 15.025 psia and rates collected subject to refund in excess of this rate.

2. That portion of the refund which is attributable to purchases by United Gas Pipe Line Company prior to January 1, 1963 under Humble's Rate Schedule Nos. 123, 149 and 154.

3. That portion of the refund which is attributable to purchases by Panhandle Eastern Pipe Line Company prior to April 1, 1964 and which represents the difference between (a) a rate of 12.2828¢ per Mcf at 14.65 psia and rates collected subject to refund in excess of this rate under Humble's Rate Schedule Nos. 198, 199, 205 and 206, (b) a rate of 16.8¢ per Mcf at 14.65 psia and rates collected subject to refund in excess of this rate under Humble's Rate Schedule No. 202, (c) a rate of 15.5¢ per Mcf at 14.65 psia and rates collected subject to refund in excess of this rate under Humble's Rate Schedule No. 204, and (d) a rate of 16.0¢ per Mcf at 14.65 psia and rates collected subject to refund in excess of this rate under Humble's Rate Schedule No. 211.

4. That portion of the refund which is attributable to purchases by United Fuel Gas Company under Humble's Rate Schedule Nos. 24, 25, 26, 135, 145 and 166 and which represents the difference between a rate of 19.9¢ per Mcf at 15.025 psia and rates collected subject to refund in excess of this rate and that portion which is attributable to purchases under Humble's Rate Schedule No. 324 and which represents the difference between a rate of 18.5¢ per Mcf at 15.025 psia and rates collected subject to refund in excess of this rate.

(C) United Gas Pipe Line Company with respect to the amounts received pursuant to Paragraph (B) above shall, pending further order of the Commission, retain and defer the flow-through of those portions which are attributable to purchases by:

1. Southern Natural Gas Company between January 1, 1963 and April 1, 1964;
2. Texas Eastern Transmission Corporation subsequent to June 14, 1961.

(D) Southern Natural Gas Company shall, pending further order of the Commission, retain and defer the flow-through of those portions of the amounts received pursuant to Paragraphs (B) and (C) which are attributable to purchases by Florida Gas Transmission Company and Texas Eastern Transmission Corporation.

(E) Texas Gas Transmission Corporation shall, pending further order of the Commission, retain and defer the flow-through of those portions of the amounts received pursuant to Paragraphs (B) and (C) which are attributable to purchases by Texas Eastern Transmission Corporation.

(F) Except as specifically ordered to retain amounts and defer the flow-through to specified parties, each company shall flow-through the refunds received pursuant to this order in accordance with the applicable Commission orders itemized in Appendix A.

(G) Within 10 days of this order, Humble shall file a report with the Commission showing the computation of the amounts to be retained by the Escrow Agent pursuant to Paragraph (B). Humble shall concurrently serve copies of such report on the Escrow Agent, Panhandle Eastern Pipe Line Company, Southern Natural Gas Company, United Fuel Gas Company, and United Gas Pipe Line Company.

(H) Where amounts have been retained pursuant to Paragraph (B) through (E) and the party which otherwise would have received such amounts is presently obligated to pass on such amounts by prior order of the Commission or will voluntarily assume the obligation to pass on such amounts, a report setting forth the details of such obligation or an agreement assuming obligation to pass on the refund shall be filed by such a party within ten days.

(I) Where any pipeline subject to the jurisdiction of this Commission and named herein receives a refund pursuant to this order, either directly from Humble or indirectly from an intermediate pipeline supplier, and contrary to our conclusion that the jurisdictional portion thereof will flow-through to its customers, claims the right to retain such amounts, that pipeline shall report to the Commission within ten days of the date of this order the basis of such claim, and when the amount is received, that pipeline shall retain, in accordance with Paragraph (J), the amount in dispute subject to our further order.

(J) The amounts ordered to be retained pursuant to Paragraphs (C) through (E) and (I) shall be retained by the pipeline under the following methods. The choice of method is optional to the pipeline required to retain the funds:

1. Commingled with its general assets but interest at 6 percent per annum shall be paid from the date the funds would flow-through, if not so retained, to the date on which they are paid to the person ultimately determined to be entitled thereto in a final order of the Commission.

2. Deposited in savings accounts in any bank or savings and loan association where deposits are insured by the Federal Deposit Insurance Corporation, with all interest earned thereon to be credited to the savings accounts. Each savings account shall not exceed $10,000, or

3. Deposited in a special escrow account on or before the date the funds would flow-through, if not so retained. If the fund is deposited in such an escrow account, the following conditions must be met:

(a) The retaining party shall submit 45 days prior to the date the funds are to be deposited, an executed escrow agreement conditioned as set out below with a certificate showing service on the party to whom the fund would otherwise be payable. Unless notified to the contrary by the Secretary within 30 days from the date of filing thereof, the Escrow Agreement shall be deemed to be satisfactory and to have been accepted for filing. The Escrow Agreement shall be entered into between retaining party and any bank or trust company used as a depository for funds of the United States Government and the agreement shall be conditioned as follows:

(b) The retaining party, the bank or trust company, and the successors and assigns of each, shall be held and formally bound unto the Federal Power Commission for the use and benefit of those entitled thereto, with respect to all amounts and the interest thereon deposited in a special escrow account, subject to such Agreement, and such bank or trust company shall be bound to pay over to such person or persons as may be identified and designated by final order of the Commission and in such manner as may be therein specified, all or any portion of such deposits and the interest thereon.

(c) The bank or trust company may invest and reinvest such deposits in any short-term indebtedness of the United States or any agency thereof or in any form of obligation guaranteed by the United States which is, respectively, payable within 120 days as the said bank or trust company in the exercise of its sound discretion may select.

(d) Such bank or trust company shall be liable only for such interest as the invested funds described in Subparagraph (c) above will earn and no other interest may be collected from it.

(e) Such bank or trust company shall be entitled to such compensation as is fair, reasonable and customary for its services as such, which compensation shall be paid out of the escrow account to such bank or trust company. Said bank or trust company shall likewise be entitled to reimbursement for its reasonable expenses necessarily incurred in the administration of this escrow account, which reimbursement shall be made out of the escrow account.

(f) Such bank or trust company shall report to the Secretary quarterly, certifying the amount deposited in the trust account for the quarterly period.

(K) Pending further order of the Commission, Humble and the Escrow Agent shall retain all remaining amounts to be refunded in accordance with Paragraphs (F) and (H) of the order of July 8, 1964.

APPENDIX A

Commission Orders Governing the Flow-Through of the Refund of Humble Oil & Refining Company in Docket No. G–9287, et al.

Company	Docket No.	Date issued
Tennessee Gas Transmission Company	G–11980, *et al*	12/21/62
Lone Star Gas Company	RP60–4	12/1/61
Southern Natural Gas Company	G–20509 and RP60-15	2/18/63
	RP64–31	5/14/64
Northern Natural Gas Company	G–19040	12/21/61
	RP64–15	1/2/64
United Gas Pipe Line Company	G–9547, *et al*	3/12/62
	RP61–18, *et al*	12/23/64
Texas Gas Transmission Corporation	G–18886	10/14/60
	RP61–15	12/26/61
Kansas-Nebraska Natural Gas Company, Inc	RP60–14	12/18/62
Panhandle Eastern Pipe Line Company	RP64–18	3/30/64
United Fuel Gas Company	G–20270	3/20/62
Natural Gas Pipeline Company of America	RP61–8	10/25/62
Texas Eastern Transmission Corporation	G–12706 and G–18841	1/25/61
Ohio Fuel Gas Company, The	G–16818, *et al*	7/28/61
Transcontinental Gas Pipe Line Corporation	RP61–13	2/2/62
Mississippi River Fuel Corporation	G–15174 and RP60–7	5/27/60
	RP61–21	8/7/64
American Louisiana Pipe Line Company	G–18419	5/16/63

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

MIDWESTERN GAS TRANSMISSION COMPANY, RP61–19 AND RP62–7; NATURAL GAS PIPELINE COMPANY OF AMERICA, RP63–6

ORDER PROVIDING FOR HEARING ON REMANDED ISSUE

(Issued April 21, 1965)

The Commission in its Opinion No. 444, issued October 13, 1964, 32 FPC 993, determined the cost of service issues relating to Midwestern Gas Transmission Company (Midwestern) and prescribed the just and reasonable rates and charges to be thereafter in force subject to further adjustment upon disposition of certain reserved issues. Among these was the question of the depreciation to be used as a deduction in computing the tax allowance in Midwestern's cost of service and the design of the rates for both Midwestern and Natural Gas Pipeline Company of America (Natural). The Presiding Examiner deferred passing on the rate design issue in his initial decision in the interest of bringing the cost of sevice issues to the Commission at the earliest possible date.

On November 12, 1964, Midwestern filed an application for rehearing and reconsideration of Opinion No. 444 and as a part of that application included a proposal for final disposition of the cost of service issues. That proposal, as modified in certain respects by Midwestern, was approved by Commission order issued December 30, 1964, 32 FPC 1548, as a settlement of Midwestern's rate proceeding (RP61-19 and RP62-7) on all but the two aforementioned issues.

In its Opinion No. 444, the Commission remanded the tax depreciation issue to the examiner for further hearing and set forth the aspects of that issue on which the parties were given an opportunity to present further evidence (Opinion No. 444, at p. 996). The hearing on the rate design issue has been completed and the briefs thereon have been filed but the examiner's decision thereon was deferred as heretofore noted.

The Presiding Examiner who has been assigned to these proceedings and who issued the initial decision on the Midwestern cost of service issues has become unavailable because in addition to his administrative duties as the new Chief Examiner of the Commission, he is also currently presiding in hearing one of the area rate proceedings. Under these circumstances and pursuant to Section 1.30(j) of the Commission's Rules of Practice and Procedure, it is appropriate that another examiner be designated to preside at the hearing hereinafter ordered and to issue the initial decision on the depreciation issue pursuant to our remand of that issue in Opinion No. 444. It is also appropriate under these circumstances that the Initial Decision be waived with respect to the rate design issue, and that the Presiding Examiner who heard the evidence on that issue be directed to certify to the Commission that portion of the record in these proceedings which relate to the rate design issue.

The Commission orders:

(A) The Initial Decision with respect to the rate design issue in these proceedings is hereby waived and the Presiding Examiner is hereby directed to certify to the Commission that portion of the record related to that issue.

(B) Pursuant to the Commission's Rules of Practice and Procedure, particularly Sections 1.27, 1.30(j), and 3.4(e)(6) thereof, the Chief Examiner shall designate a hearing officer to preside at the hearing hereinafter provided and any prehearing conferences which he may deem appropriate in these proceedings and to render an Initial Decision on the depreciation allowance to be used in computing the income tax to be reflected in Midwestern's cost of service.

(C) Midwestern shall serve its complete case in chief with respect to the aforementioned reserved issue upon all parties of record, including the Commission Staff, on or before May 14, 1965.

(D) All other parties of record, including the Commission Staff, desiring to present evidence on this reserved issue shall serve their testimony and exhibits on or before May 31, 1965.

(E) Midwestern shall serve any rebuttal evidence which it desires to tender, upon all parties of record, including the Commission Staff, on or before June 15, 1965.

(F) Pursuant to the aforementioned remand, the Commission's Rules of Practice and Procedure, and the Commission's Regulations under the Natural Gas Act, a hearing be held in the above-designated proceedings commencing on June 22, 1965, 10:00 a.m. (EDST), in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C., for the purposes hereinbefore stated.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

SACRAMENTO MUNICIPAL UTILITY DISTRICT, PROJECT NO. 2101

ORDER APPROVING REVISED PROJECT EXHIBIT

(Issued April 21, 1965)

On May 12, 1964, Sacramento Municipal Utility District, licensee for the Upper American River Project No. 2101, filed for Commission approval Exhibit K-28 (FPC No. 2101-189), together with a 9-page typewritten supplemental metes and bounds description entitled "Exhibit K-28 (Supplement) Project No. 2101 Slab Creek Reservoir Proposed Project Boundary."

Approval of the exhibit and supplement thereto would effect a reduction (except in the vicinity of Slab Creek Dam) in the project boundary to approximate the contour at Elevation 1870, which is the estimated flood flow line for the Slab Creek reservoir. The normal high water line is Elevation 1850.

The lands involved are within Eldorado National Forest. By letter dated April 13, 1965, the Forest Service has advised that the proposed project boundary as delineated on Exhibit K-28 is satisfactory to the Service.

Inasmuch as Article 27, of the license, as amended, does not require the Licensee to file Exhibit F earlier than one year after the completion of the project works of Slab Creek development, annual charges for occupancy of lands within the boundary for Slab Creek reservoir are reserved for future determination as contemplated by Article 46 of the license.

The Commission finds:

The afore-mentioned exhibit and supplement thereto conforms to the Commission's rules and regulations and should be approved as part of the license for the project, and superseded Exhibit K-9 (FPC No. 2101-147) should be eliminated from the license for the project.

The Commission orders:

The afore-mentioned exhibit and supplement thereto is hereby approved as part of the license for Project No. 2101 and Exhibit K-9 (FPC No. 2101-147) which is superseded is hereby eliminated from the license for the project.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

UNITED GAS PIPE LINE COMPANY, RP61-18, RP63-1, RP65-1; NATURAL GAS PIPELINE COMPANY OF AMERICA, RP65-54; SOUTHERN NATURAL GAS COMPANY, RP65-55; TENNESSEE GAS TRANSMISSION COMPANY, RP65-56; TEXAS GAS TRANSMISSION CORPORATION, RP65-57

ORDER RELEASING CERTAIN REFUNDS AND REQUIRING REPORTS OF INTENDED DISPOSITION OF OTHER REFUNDABLE AMOUNTS

(Issued April 21, 1965)

The Commission by order issued December 23, 1964, 32 FPC 1515, approved a rate settlement in the United Gas Pipe Line Company dockets captioned above and, among other things, directed United to retain all amounts refundable to its customers, pending further order prescribing the disposition of those amounts.

That order also provided for certain procedures and the filing of reports to aid us in the disposition of the retained amounts. The procedures prescribed contemplated effectuation of our purpose that there be a proper and equitable distribution of the funds of money created by our own process (Opinion No. 428-A, issued September 2, 1964, 32 FPC 687 at p. 695).

On January 6, 1965, United filed the report required by paragraph (C) of our order issued December 23, 1964. No objections thereto have been received. United sells natural gas for resale at rates subject to our jurisdiction to the distributor customers listed in that report and to the following natural gas pipeline companies: Mississippi River Fuel Corporation, Mississippi River Transmission Corporation, Natural Gas Pipeline Company of America, Southern Natural Gas Company, Texas Eastern Transmission Corporation, and Texas Gas Transmission Corporation. United also renders a transportation service, at rates subject to our jurisdiction, to Southern Natural Gas Company and Tennessee Gas Transmission Company. Pursuant to our order issued December 23, 1964, United has retained the amounts refundable to its jurisdictional distributor customers and to the listed pipeline customers applicable to gas purchased or transportation service received during the period June 15, 1961 through August 31, 1964. In Appendix A to the settlement agreement approved by that order, the amount thus being retained by United is shown to aggregate $17,053,785.

In addition, that appendix also reveals that certain producer suppliers of United are retaining $3,104,097 of refundable amounts. This sum includes some $2,187,315 refundable to United by Humble Oil & Refining Company pursuant to the rate settlement in Docket No. G-9287, *et al.*, approved by our order issued July 8, 1964, 32 FPC 49, which will be separately dealt with in orders to be issued in that producer docket. Accordingly the actions taken in the instant order have no application to monies which United or its customers may receive as an outgrowth of the release of the retained refunds now in the hands of Humble.

It now appears that it would be appropriate to authorize United to flow-through the amounts refundable to those of its jurisdictional customers which are distribution companies, and to Mississippi River Fuel Corporation (Fuel) and Mississippi River Transmission (Transmission)[1] Company. Fuel and Transmission, by the terms of the agreement in Docket No. RP61-21, *et al.* and the Commission's order issued August 7, 1964, 32 FPC 547, in those dockets, are obligated to flow-through the total amount of such refunds allocable to their jurisdictional customers and none of those customers are subject to the rate regulatory authority of this Commission with respect to the transmission herein involved.

The refunds thus released to Fuel or Transmission and United's immediate distributor customers, amount to more than $6,684,000 as indicated in Appendix A to the stipulation and agreement dated December 16, 1964. Such released refunds include those suppliers refunds already paid to United subject to the express condition that they shall be retained by United until further order of the Commission.

It is also our purpose to expedite the release and payment of refundable amounts presently being retained by producer-suppliers of United. Accordingly, United is hereby authorized to flow-through to its distributor customers and to Fuel and Transmission the proportionate part of the amounts received by way of refund from such producer-suppliers attributable to gas purchases between June 15, 1961 and August 31, 1964.

---

[1] Pursuant to a Commission order issued on August 7, 1964, 32 FPC 551, Transmission acquired the pipeline facilities of Fuel as of October 1, 1964. Accordingly, refunds attributable to gas purchases made prior to that closing date are payable to Fuel, and those made subsequently are payable to Transmission.

Our action in requiring retention by suppliers of refundable amounts is intended to serve only the limited purpose of eliminating the possibility that the immediate release and payment of refunds to a pipeline which claims that it is not obligated to flow through such refunds, or portions thereof, to its own customers would create a permanent and irremediable gap in the refund line.[2] Where no such gap in the refund line is indicated, we will authorize the release and payment of retained amounts to the pipeline customers of United to the extent that the recipient pipeline will actually flow-through the refunds to its own distributor customers. Further, if one of United's primary pipeline customers is obligated to refund certain amounts to another pipeline within our rate regulatory jurisdiction which is, in turn, similarly obligated to flow-through to its own jurisdictional customers we will permit such release and payment.

In order to implement this policy, it is necessary and appropriate that each of the jurisdictional pipeline purchasers listed in the caption of this order which may receive refunds from United shall submit the report hereinafter required; indicating whether it is expressly obligated to flow-through the amounts received, whether it proposes voluntarily to pass on such refunds or whether it intends to retain the whole or any portion thereof. No such reports are necessary, however, with respect to refundable amounts now in the hands of Humble Oil & Refining Company (Humble), Docket No. G-9287, *et al.*

Inasmuch as Texas Eastern has advised the Commission that it proposes to retain all amounts refundable to it applicable to gas purchases during the period herein involved, the issues raised by Texas Eastern's position will be the subject of a separate proceeding.

We are herein expressly reiterating our prior requirement[3] that United shall retain certain refundable amounts now or later frozen in its hands or received from a producer supplier (other than Humble) which have not been expressly released herein for payment to Fuel or Transmission and to its own immediate distributor customers.

The Commission orders:

(A) United and its duly authorized escrow agent are hereby authorized to distribute and pay, within ten days from the date of this order, to Fuel and Transmission and to those of its customers listed in the designation of distributor customers which United filed on January 6, 1964, all amounts (shown in Appendix A to the settlement agreement approved by our order issued December 23, 1964), being retained by either of them (including supplier refunds), which are attributable to gas purchased from United by any of such jurisdictional customers during the period covered by United's rate increase filings in Docket No. RP61-18 and Docket No. RP63-1.

(B) Within 10 days of the date of payment of the refunds identified in ordering paragraph (A) above, United shall submit to this Commission a copy of the releases received from each of its pipeline and distributor jurisdictional customers with respect to the refunds authorized herein.

(C) United shall retain refunds frozen by prior order of the Commission which have not been specifically released by this order, under the terms and conditions specified in ordering paragraphs (H) and (I) of Opinion No. 428-A entered in Docket No. RP63-1 on September 2, 1964, until the issuance of a further order directing or authorizing the disposition of such refunds. Provided, however, that any amounts received by United from Humble in Docket No. G-9287, *et al.*, shall be retained and disposed of in accordance with the provisions of the order being issued this day in said docket, *supra*, p. 830.

---

[2] See settlement orders imposing refund retention requirements in *Hunt Oil Company*, Docket No. G-9065, *et al.*, July 16, 1963, 30 FPC 220; *Humble Oil & Refining Company*, Docket No. G-9287, *et al.*, July 8, 1964; *United Gas Pipe Line Company*, Docket No. RP63-1, September 2, 1964.

[3] Pursuant to Ordering Paragraphs (C) and (D) of our order of December 23, 1964, captioned "Order Approving Rate Settlement and Requiring Retention of Certain Refunds."

(D) Natural Gas Pipeline Company of America, Southern Natural Gas Company, Tennessee Gas Transmission Company and Texas Gas Transmission Corporation, in their respective dockets captioned above, shall submit, in triplicate within twenty days of the date of issuance of this order, a detailed report showing:

(i) The amount received from each of its suppliers, the portion if any, of each such amount which the reporting pipeline claims it has a right to retain, together with a full explanation of the basis for such claim, including any pertinent factual circumstances.

(ii) The portion of the amounts refundable under Appendix A to the settlement agreement approved by our order issued December 23, 1964, in Docket No. RP61-18, *et al.*, which each proposes to flow-through to its jurisdictional customers, together with a detailed explanation of the methods and allocation factors used in determining the jurisdictional portion of such refunds.

(iii) The proposed plan of distribution of the respective total amounts received from each producer-supplier, setting forth by months, by rate schedules, and by purchasers, the amount to be refunded to each jurisdictional customer, the billing determinants used to compute the refunds to each customer and the aggregate amount attributable to non-jurisdictional sales in each such reporting period.

Provided, however, that such reports need not include refunds attributable to amounts now being retained by Humble in Docket No. G-9287, *et al.*

The reporting pipeline shall serve a copy of each such report on every one of its jurisdictional customers.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

THE CITY OF ARLINGTON, KENTUCKY, DOCKET NO. CP65-271

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued April 22, 1965)

On March 8, 1965, The City of Arlington, Kentucky (Applicant) filed in Docket No. CP65-271 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Trunkline Gas Company (Trunkline) to establish physical connection of its natural gas transmission facilities with the facilities proposed to be constructed by Applicant, and to sell and deliver natural gas to Applicant for resale and distribution in Arlington, Kentucky, all as more fully set forth in the application.

Applicant proposes to construct and operate a natural gas distribution system in Arlington and approximately two miles of 2.5-inch transmission lateral extending therefrom in an easterly direction to a proposed point of interconnection with Trunkline's main transmission system.

Applicant's estimated third year annual and peak day requirements are 39,898 Mcf and 524 Mcf respectively.

Total estimated cost of the proposed project is $105,000, and will be financed through the issuance and sale of Natural Gas Revenue Bonds.

Trunkline has filed no objection to the issuance by the Commission of an order as requested by Applicant.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

The Commission finds:

(1) Trunkline Gas Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 29, 1949, in Docket No. G–882 (8 FPC 250).

(2) Applicant, The City of Arlington, Kentucky, is a municipal corporation incorporated under the laws of the State of Kentucky and is legally empowered to construct and operate natural gas facilities and to sell and distribute natural gas in said city.

(3) It is necessary and desirable in the public interest that Trunkline be directed to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to sell and deliver up to 524 Mcf of natural gas per day to Applicant, as set forth in the application and as hereinafter ordered and conditioned.

(4) This order should be conditioned upon Applicant being prepared to receive gas from Trunkline, as proposed, within one year from the date on which this order issues.

(5) The requirement that Trunkline serve Applicant, as proposed, will not place any undue burden upon Trunkline nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Trunkline Gas Company be and it is hereby directed to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to sell and deliver up to 524 Mcf of natural gas to Applicant, all as hereinbefore described and as set forth in the application.

(B) Trunkline shall report to the Commission in writing the date of commencement of service to Applicant, within ten days thereof.

(C) This order is conditioned upon Applicant being prepared to receive natural gas from Trunkline, as proposed, within one year from the date on which this order issues.

(D) Trunkline shall execute and file with the Commission a service agreement with Applicant in accordance with the Commission's Regulations under the Natural Gas Act.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

CITY OF BISMARCK, MISSOURI, DOCKET NO. CP65–254

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued April 22, 1965)

On February 23, 1965, the City of Bismarck, Missouri (Applicant) filed in Docket No. CP65–254 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Mississippi River Transmission

Corporation (Mississippi) to establish physical connection of its natural gas transmission facilities with the facilities proposed to be constructed by Applicant, and to sell and deliver natural gas to Applicant for resale and distribution in Bismarck, Missouri and environs, all as more fully set forth in the application.

Applicant proposes to construct and operate a natural gas distribution system in Bismarck, and approximately nine miles of 3½-inch transmission lateral extending in a northeasterly direction therefrom to a point of interconnection with Mississippi's main transmission system at Desloge, Missouri.

Applicant's estimated third year annual and peak day requirements are 71,050 Mcf and 716 Mcf respectively.

Total estimated cost of the proposed project is $255,000, and will be financed through the issuance and sale of gas revenue bonds.

On March 17, 1965, Mississippi filed its answer to the application, stating that it has no objection to the issuance by the Commission of an order as requested by Applicant.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

The Commission finds:

(1) Mississippi River Transmission Corporation, a Delaware corporation having its principal place of business in St. Louis, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 29, 1960, in Docket No. CP60-95 (24 FPC 1020).

(2) Applicant is an incorporated community of the State of Missouri, and is legally authorized to construct and operate the proposed facilities and to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest that Mississippi be directed to establish physical connection of its transmission facilities with the facilities proposed to be constructed by Applicant, and to sell and deliver up to 716 Mcf of natural gas per day to Applicant for resale and distribution as hereinbefore described, upon the terms and conditions of this order.

(4) The requirement that Mississippi serve applicant, as hereinafter ordered, will not place an undue burden upon Mississippi, require it to enlarge its transportation facilities, or impair its ability to render adequate service to its existing customers.

(5) Applicant should be prepared to receive natural gas from Mississippi for resale and distribution in Bismarck, Missouri within one year from the date on which this order issues.

The Commission orders:

(A) Mississippi River Transmission Corporation be and it is hereby directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant, and to sell and deliver up to 716 Mcf of natural gas per day to Applicant as hereinbefore described, as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) Mississippi shall report to the Commission in writing the date of commencement of service to Applicant within 10 days thereof.

(C) Applicant shall be prepared to receive service from Mississippi as directed herein, within one year from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

BROWN COMPANY, DOCKET NO. E-7212

ORDER AUTHORIZING DISPOSITION OF FACILITIES

(Issued April 22, 1965)

Brown Company (Brown-Maine), a corporation organized under the laws of the State of Maine and authorized to do business in the States of Alabama, California, Florida, Illinois, Massachusetts, Missouri, New Hampshire, New York. Oregon and Vermont with its principal place of business at Berlin, New Hampshire, filed an application on March 16, 1965, with the Federal Power Commission, pursuant to Section 203 of the Federal Power Act, requesting authority for the sale of certain electric facilities to Brown-New Hampshire, Inc. (Brown-New Hampshire). By separate application of even date, Brown-Maine sought authority to transfer its hydroelectric licenses to Brown-New Hampshire.

Brown-Maine is an industrial corporation which is engaged primarily in the manufacture of wood pulp, paper, cellulose fibre products and plywood. The electrical facilities of Brown-Maine, which it wishes to dispose of, are located in Coos County, New Hampshire and are used to supply power to mills of the company in Gorham and Berlin, New Hampshire. According to the application, the company makes no sales of power at retail but, on occasion, sells secondary power on a split increment basis to the Public Service Company of New Hampshire. Brown-Maine owns and operates steam and hydro generating systems with associated facilities to connect its generating units to its industrial plants. Deliveries of energy generated by Brown-Maine to the Public Service Company of New Hampshire are made over the Brown-Maine system to a tap located on the 22 kv line which is part of the system between Gorham, New Hampshire and Berlin, New Hampshire.

Brown-New Hampshire, at present, neither owns nor operates any facilities, but when the proposed transfer becomes effective, it will own and operate the facilities of Brown-Maine described below without change in manner of operations.

The facilities to be transferred consist of three steam generators, one internal combustion plant, 15 miles of 22 kv lines, 72,850 kva of substation transformer capacity in 8 substations, and six hydroelectric generating plants, all of which are located in the State of New Hampshire. Four of the hydroelectric plants, Project Nos. 2300, 2311, 2326, 2327, are operating under Commission licenses. In a separate order issued concurrently herewith, *Brown Company and Brown-New Hampshire, Inc., Project No. 2300, et al., infra*, p. 845, the transfer of the licenses for these facilities from Brown-Maine to Brown-New Hampshire is approved.

According to the application, Brown-Maine plans to transfer the facilities to Brown-New Hampshire in return for all the Common Stock of Brown-New Hampshire. Brown-Maine represents that the depreciated original cost on its books as of November 30, 1964 of all the facilities to be transferred, including the generating plants, was $2,539,944. Applicant further represents that the value of the stock of Brown-New Hampshire to be issued to Brown-Maine on the transfer of facilities will equal the depreciated original cost of those facilities to Brown-Maine at the time of transfer and that no other consideration will be given for the transfer.

Brown-Maine represents that it is consistent with the public interest to transfer such of its properties as are used for the generation and distribution of electric energy to a wholly-owned subsidiary to which regulations pertaining to public utilities would be more nearly applicable, rather than to subject the entire Brown Company to public utility regulation. After the above described transaction is completed, Brown-Maine will no longer own or operate facilities subject to the jurisdiction of the Commission within the meaning of Section 203 of the Federal Power Act. According to the application, at the end of Brown-Maine's 1964 fiscal year, its total assets amounted to $60,354,117, of which only $2,539,944 represented electric facilities; but because it owns and operates an electric generation and distribution system, Brown-Maine is now subject to or may become subject to various provisions of state and federal regulatory statutes administered by regulatory commissions.

Written notice of the application has been given to the Public Service Company of New Hampshire and to the Governor of that State. Notice was also published in the Federal Register on March 27, 1965 (30 F.R. 4082), stating that any person desiring to be heard or to make any protest with reference to the application, should on or before April 12, 1965, file petitions or protests with the Federal Power Commission, Washington, D.C. 20426. No petition or protest or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Brown-Maine, a corporation, owns and operates an electric system in New Hampshire which is interconnected with and sells electric energy generated in New Hampshire to Public Service Company of New Hampshire (Public Service). Some of this electric energy is transmitted by Public Service into and is consumed in states adjoining New Hampshire. Brown-Maine therefore owns and operates facilities for the transmission and sale at wholesale of electric energy which is generated within the State of New Hampshire and consumed outside the state in which it is generated. Brown-Maine is, therefore, a public utility within the meaning of Section 203 of the Federal Power Act, subject to the jurisdiction of the Commission.

(2) By the proposed transaction, as described above, Brown-Maine will dispose of facilities subject to the jurisdiction of the Commission within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) After the above-described transaction is completed, Brown-Maine will no longer own or operate facilities subject to the jurisdiction of the Commission within the meaning of Section 203 of the Federal Power Act.

(4) Upon the acquisition of Brown-Maine's facilities, subject to the Commission's jurisdiction, Brown-New Hampshire will become a public utility within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(5) The proposed disposition of facilities, as recited above upon the terms and conditions set forth in the application, subject to the provisions of this order, will be consistent with the public interest as expressed in Section 203 of the Federal Power Act for the reasons stated above.

The Commission orders:

(A) The proposed disposition by Brown-Maine of the above-described facilities subject to the jurisdiction of the Commission, as described above, is authorized and approved upon the terms and conditions and for the purposes set forth in the application, subject to the provisions of this order.

(B) Brown-New Hampshire shall record the proposed transactions and the facilities and properties described above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) This authorization shall expire unless the transactions herein authorized and approved are consummated within 60 days from the date of issuance of this order.

(D) This authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost, or any other matter whatsoever now pending or which may come before this Commission or any other regulatory body and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

BROWN COMPANY AND BROWN-NEW HAMPSHIRE, INC., PROJECT NOS. 2300, 2311, 2326 AND 2327

ORDER APPROVING TRANSFER OF LICENSES

(Issued April 22, 1965)

Joint application was filed on March 16, 1965, pursuant to Section 8 of the Federal Power Act (Act) by Brown Company, a Maine corporation, and Brown-New Hampshire, Inc., a New Hampshire corporation for Commission approval of transfer of the licenses for the above-designated projects from the former to the latter. The licenses issued in Project Nos. 2300, 2311, 2326 and 2327 are all major licenses for constructed projects located in Coos County, New Hampshire, on the Androscoggin River, a navigable water of the United States.

The application is the result of a proposed transfer by Brown Company to Brown-New Hampshire of certain of its electric facilities in exchange for all of the authorized capital stock of Brown-New Hampshire, Inc. Commission authorization of this transaction has been granted by our order of even issuance date in Docket No. E-7212 *supra*, p. 843. Notice of this application for the transfer of license was given by publication in the Federal Register on March 27, 1965.

The Commission finds:

(1) The proposed transferee is a corporation organized under the laws of the State of New Hampshire, is domesticated in the State of New Hampshire, and has submitted satisfactory evidence of compliance with the requirements of all applicable state laws as necessary for the operation of Project Nos. 2300, 2311, 2326, and 2327.

(2) Approval of transfer, upon compliance with the conditions set forth herein, of the licenses for the projects designated in finding (1) above to the proposed transferee will not be inconsistent with the public interest.

The Commission orders:

(A) The transfer of the licenses for the projects designated in finding (1) above from Brown Company to Brown-New Hampshire, Inc. is hereby approved, effective as of the effective date of the transfer referred to above, subject to Section 9.3 of the Commission's Regulations under the Federal Power Act, and subject to the further condition that the net investment in the projects shall not be increased on account of the transfer: provided that the transferee shall be subject to the conditions and obligations of the licenses and to all of the provisions of the Act to the same extent as though it were the original licensee for the projects.

(B) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Federal Power Act, and failure to file such an application shall constitute acceptance of the licenses for the projects designated in finding (1) above by Brown-New Hampshire, Inc. In acknowledgment of the acceptance of such licenses, this instrument shall be signed for Brown-New Hampshire, Inc., the new licensee, and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

VILLAGE OF DAHLGREN, ILLINOIS, DOCKET NO. CP65–250

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued April 22, 1965)

On February 23, 1965, the Village of Dahlgren, Illinois (Applicant) filed in Docket No. CP65–250 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Trunkline Gas Company (Trunkline) to establish physical connection of its natural gas transmission facilities with the facilities proposed to be constructed by Applicant, and to sell and deliver natural gas to Applicant for resale and distribution in Dahlgren, Illinois, all as more fully set forth in the application.

Applicant proposes to construct and operate a natural gas distribution system in Dahlgren and approximately 3.5 miles of 2-inch lateral extending therefrom in an easterly direction to a proposed point of interconnection with Trunkline's main transmission system in Hamilton County, Illinois.

Applicant's estimated third year annual and peak day requirements are 31,316 Mcf and 413 Mcf respectively.

The total estimated cost of the proposed project is $150,000, and will be financed with proceeds from the issuance and sale of gas revenue bonds.

Applicant states that as a municipal corporation incorporated under the laws of the State of Illinois, full authorization was given by action of the Village President and Board of Trustees, as approved by the electors, and that no other authorization is required.

Trunkline has filed no objection to the issuance by the Commission of an order as requested by Applicant.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

The Commission finds:

(1) Trunkline Gas Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 29, 1949, in Docket No. G–882 (8 FPC 250).

(2) Applicant, the Village of Dahlgren, Illinois, is a municipal corporation incorporated under the laws of the State of Illinois and is legally empowered to construct and operate natural gas facilities and to sell and distribute natural gas in said village.

(3) It is necessary and desirable in the public interest that Trunkline Gas Company be directed to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to sell and deliver up to 413 Mcf of natural gas per day to Applicant, as set forth in the application and as hereinafter ordered and conditioned.

(4) This order should be conditioned upon Applicant being prepared to receive natural gas from Trunkline, as proposed, within one year from the date on which this order issues.

(5) The requirement that Trunkline serve Applicant, as proposed, will not place any undue burden upon Trunkline nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Trunkline Gas Company be and it is hereby directed to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to sell and deliver up to 413 Mcf of natural gas per day to Applicant, all as hereinbefore described and as set forth in the application.

(B) Trunkline shall report to the Commission in writing the date of commencement of service to Applicant, within ten days thereof.

(C) This order is conditioned upon Applicant being prepared to receive natural gas from Trunkline, as proposed, within one year from the date on which this order issues.

(D) Trunkline shall execute and file with the Commission a service agreement with Applicant in accordance with the Commission's Regulations under the Natural Gas Act.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

KANSAS-COLORADO UTILITIES, INC., DOCKET NO. CP65-263

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 22, 1965)

On March 2, 1965, Kansas-Colorado Utilities, Inc. (Applicant) filed in Docket No. CP65-263 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 7,500 feet of 2-inch lateral pipeline together with a metering station to enable Applicant to receive gas purchased from the Anadarko Production Company in the Hugoton Field, Hamilton County, Kansas, all as more fully set forth in the application.

The proposed gas purchase from Anadarko in said Hugoton Field will total approximately 100 Mcf daily, and will be at a price of 13.5¢ per Mcf (14.65 psia).

The cost of the proposed facilities is estimated to be $7,850 which will be defrayed from cash on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 21, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplement thereto, and exhibits submitted in support of the authorization, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Kansas-Colorado Utilities, Inc., a Kansas corporation having its principal place of business in Colorado Springs, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of July 24, 1945, in Docket No. G-577 (4 FPC 1026).

(2) The proposed construction and operation of facilities and the transportation of natural gas in interstate commerce, as hereinbefore described and as more fully described in the application and exhibits filed in this proceeding are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and the transportation of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, Kansas-Colorado Utilities, Inc., authorizing the construction and operation of facilities and the transportation of natural gas in interstate commerce, as hereinbefore described, all as more fully described in the application and exhibits filed in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized by paragraph (A) above shall be constructed and placed in operation within 6 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

LAKE SUPERIOR DISTRICT POWER COMPANY, PROJECT NO. 2475

ORDER ISSUING LICENSE (MINOR)

(Issued April 22, 1965)

Application was filed on June 1, 1964 by Lake Superior District Power Company (Applicant) of Ashland, Wisconsin, for a license under Section 4(e) of the Federal Power Act (Act) for constructed minor Project No. 2475, known as the Thornapple Hydro Plant, located on the Flambeau River, in Thornapple, Rusk County, Wisconsin. No lands of the United States are affected by the project.

The project dam was originally constructed in 1909 and in 1920 the spillway of planked sheeting was replaced with a concrete apron. Applicant acquired the project in 1928 and made substantial remodeling in that year. No substantial alterations to the project have been made thereafter.

Applicant does not believe a license is required for its project. However, Applicant requests that if a license is issued, it should have a current effective date. In a proceeding on an application for license filed by Dairyland Power Cooperative for Project No. 1960 on the Flambeau River, the Commission on November 17, 1949, found, among other things, that the Flambeau and Chippewa Rivers, together with the Mississippi River were used for a number of years as a highway for the floating and rafting of quantities of logs and lumber in interstate commerce, and that the Flambeau River, at least from a point above Project No. 1960, and the Chippewa River, at least from its confluence with the Flambeau River constitute navigable waters of the United States (8 FPC 1276, 1278). Project No. 1960 is located at mile 25.5 on the Flambeau and Project No. 2475 is located 17½ miles downstream therefrom.

The Secretary of the Army and the Chief of Engineers have reported that the plans of the project structures affecting navigation are satisfactory insofar as the interests of navigation are concerned.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project, the conditions in the interests of fish and wildlife and recreation usually included in licenses for the type of project herein under consideration.

The Department of Health, Education, and Welfare has advised that pollution problems do not occur in the Flambeau River and it does not believe the operation of the Thornapple dam has a significant effect on water quality.

In our order on rehearing issued February 17, 1965, in *Wisconsin Power & Light Company, Project No. 2347, et al.*, 33 FPC 275, we stated that we would have no objection to the issuance of licenses for minor projects without waiving Sections 14 and 15 of the Federal Power Act and the other provisions of the Act necessary to the effectuation of those sections, provided the minor project applications are timely supplemented pursuant to Section 4.50 of our Regulations under the Act (18 CFR § 4.50), which relates to applications for major projects. In the event the Applicant herein wishes a license in which those provisions of the Act are not waived it should so advise us within 30 days from the date of issuance of this order and file its supplemental application within 30 additional days thereafter.

By Article 13 herein we are requiring Applicant to file within one year from the date of issuance of this license a recreational use plan.

In accordance with the criteria set forth in our April 25, 1962 Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of November 1, 1949 and a terminating date of December 31, 1993.

The Commission finds:

(1) The project affects navigable waters of the United States.

(2) Applicant is a corporation organized under the laws of the State of Wisconsin, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for

the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 1,870 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(7) It will be in the public interest to waive pursuant to Section 10(i) of the Act the terms and conditions contained in the following sections of Part I of the Act:

Section 4(b), except the second sentence thereof; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 14, except insofar as the power of condemnation is reserved; 15; 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

The Commission orders:

(A) This license is hereby issued to Lake Superior District Power Company (Licensee) of Ashland, Wisconsin, under Sections 4 and 10(i) of the Federal Power Act (Act) for a period effective as of November 1, 1949 and terminating December 31, 1993, for the continued operation and maintenance of the Thornapple Hydro Plant Project No. 2475, located on the Flambeau River in Rusk County, Wisconsin and affecting navigable waters of the United States, subject to the terms and conditions of the Act, insofar as not expressly waived herein, which Act is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2475 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined;

(ii) project works consisting of: (1) a rock-filled timber crib dam 522 feet long, the westerly 157 feet containing the powerhouse and the remaining 365 feet being the spillway section; (2) twenty-two tainter gates with hydraulic gate lifters, twenty of which are 14 feet wide, one 17 feet wide, one 16 feet wide, and one of which is 8 feet 2 inches wide and 8 feet 5 inches high; (3) a storage reservoir of 295 acres extending 2 miles from the dam which operates under a normal head of 13.5 feet; (4) a powerhouse of brick construction 72 feet long, 30 feet wide and 25 feet high containing 2 generators rated at 700 kilowatts at 0.8 power factor connected to 2 turbines 1170 horsepower each; and (5) appurtenant facilities; and

(iii) all other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, and all rights and interests, the possession of which is necessary or appropriate in the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-9 (July 1, 1964) entitled "Terms and Conditions of License for Constructed Minor Project Affecting Navigable Waters of the United States" (32 FPC 577), which terms and conditions, designated as Articles 1 through 11, are attached hereto, and made a part hereof; and subject to the following special conditions set forth herein as additional articles:

Article 12. For the purpose of reimbursing the United States for the costs of Administration of Part I of the Act the Licensee shall pay to the United States the following annual charges:

(i) From the effective date of the license, November 1, 1949, through March 31, 1962, $5.00 per annum; and

(ii) From April 1, 1962, $93.50 per annum.

Article 13. The Licensee shall, within one year from the date of this license, file with the Commission for approval its proposed recreational use plan for the project. The plan shall be prepared after consultation with appropriate Federal, State and local agencies, and shall include recreational improvements which may be provided by others in addition to the improvements the Licensee plans to provide.

(D) The terms and conditions of the Act, which it has been found above to be in the public interest to waive, are hereby excluded from this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

CITY OF WETMORE, KANSAS, DOCKET NO. CP64-177

ORDER ADOPTING INITIAL DECISION

(Issued April 22, 1965)*

Syllabus

1. Based upon new showing of economic feasibility, Commission *directs* Michigan Wisconsin Pipe Line Company under Section 7(a) of the Natural Gas Act, to establish physical connection of its facilities with those proposed to be constructed by applicant and sell natural gas to applicant. PP. 852, 855.

Albert J. Feigen for City of Wetmore, Kansas.

Charles V. Shannon and *Louis Flax* for Michigan Wisconsin Pipe Line Co.

Agnes Mae Wilson for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

This proceeding is before us on Examiner Arthur H. Fribourg's decision issued March 25, 1965, on an application by the City of Wetmore, Kansas for an order under Section 7(a) of the Natural Gas Act directing Michigan Wisconsin Pipe Line Company to establish a connection and to deliver and sell certain specified quantities of natural gas to serve a proposed municipal gas system. Applicant, Michigan Wisconsin and the staff are the only parties to the case.

The application was denied initially by the Examiner on the ground that the record did not show that the project as proposed would be economically sound. The denial was without prejudice to a further showing with respect to its feasibility. No exceptions were taken to that decision; instead, the City of Wetmore submitted additional evidence to meet the deficiencies cited by the Examiner. Based on this new evidence the Examiner has now recommended approval of the project. By letter to the Commission dated April 6, 1965,

---

*Initial decisions appear on pp. 852, 855.

Michigan Wisconsin, which earlier had challenged the economic soundness of the project, has stated that it does not except to the supplemental decision.

On our consideration of the evidence we conclude, as has the Examiner, that the record is now sufficient to support the claim of economic feasibility. The findings of the Examiner, and his conclusions based thereon, will be adopted by us as the decision of the Commission.

The Commission orders:

The decision issued in this proceeding by the Examiner on March 25, 1965, is hereby adopted by and as the decision of the Commission as of the date of issuance of this order.

SUPPLEMENTAL DECISION

OF THE PRESIDING EXAMINER UPON APPLICATION UNDER SECTION 7(a) OF THE NATURAL GAS ACT

(Issued March 25, 1965)

FRIBOURG, *Presiding Examiner:* By decision dated September 22, 1964, the Presiding Examiner denied the application of the City of Wetmore for an order directing Michigan Wisconsin Pipe Line Co. to establish a physical connection with a lateral which the city proposed to construct to serve a proposed municipal gas system, to deliver and sell to the city the gas requirements of the proposed system, and to construct a portion of the lateral in accordance with the pipeline's so-called "10¢ formula".

The order embodied in the September 22 decision suggested that the city be permitted a chance to offer "further evidence in support of the economic and financial feasibility" of the project, mainly because the record was insufficient with respect to the probable future use of gas and the relation of the cost of the project to the size of the bond issue. No exceptions were taken to that decision.

The Commission, in accordance with the suggestion so submitted, allowed the city to come forward with additional evidence, which has now come in. No participant objects to the receipt of the proffered evidence or requests any further hearing.

The record is reopened for the purpose of receiving the following evidence:

Final revisions to Exhibit No. 1.
  Sheet F, page 2
  Sheet G, pages G-1 and G-2
  Sheet X-1
Revised Exhibit No. 2
Final revisions to Exhibit No. 3
  Sheet I, pages 1 through 5
  Sheet K
  Sheet N, pages 1, 2 and 3
Exhibit 11 Folder, "Survey Sheets, etc."
Exhibit 12 Map—Diagrams of City of Wetmore.

In addition, the Presiding Examiner designates the following as items by reference to the files of the Commission:

Item D Letter, February 18, 1965, from Charles V. Shannon, counsel for intervener, to Presiding Examiner

Item E Letter, March 17, 1965, from Louis Flax, counsel for intervener, to Presiding Examiner

The new evidence (Exh. 1, p. 1) reiterates the city's original claim of 220 potential customers, based on a new survey of the community. Included among the 220 were 156 who made deposits and who signed agreements to convert their heating systems to natural gas and to buy natural gas from the city in the event that it becomes available. The survey showed, person by person, 170 potential residential customers, 48 potential commercial customers, and 2 schools. The figures showing the number of potential customers were disputed at the hearing, but the pipeline does not now seek to controvert any of the new evidence in which they are contained. The city's new evidence shows the potential and estimated number of customers as follows:

	Potential	Year of operation—estimated number of customers		
		1st	2d	3d
Residential	170	126	134	140
Commercial	48	28	31	34
Schools	2	2	2	2
Total	220	156	167	176

In the light of the new evidence, the Examiner now accepts the estimate of 220 potential customers.

The staff, in its comments on the new evidence, estimates the number of potential customers at 127 residential, 28 commercial and 2 schools, and it uses these figures as its estimate of the probable number of customers for the first year and each year thereafter. Its calculations thus are based on the assumption that every potential customer will sign up at the beginning of the first year and that there will be no subsequent change. The estimate is derived from its count of the agreements signed by those who have agreed to take gas from the city and have paid deposits. Nothing is allowed for any possible future growth, despite the staff's own comment that "It appears reasonable to expect some increases," and despite the showing that there are numerous properties not included in the initial load which may add to it in future years.

The staff questions the propriety of including the two schools, pointing out that "the commitments for the schools are signed only by the school principal." The Examiner disagrees with the staff in this regard, seeing no reason to go behind the written agreements of persons whose position commands respect and betokens responsibility.

The city estimates that by the third year 176 customers, or 80 percent of the potential, will be connected to the system. This is the same percentage as found by the Presiding Examiner in his first decision. The percentage there found was unchallenged. Upward revision in the first and second years (from 50 percent and 65 percent to 70 percent and 76 percent, respectively) is justified by the signed agreements, but is in any event not of major consequence in relation to the thirty-year term of the proposed bond issue.

Since 156 customers have made deposits, and since 23 more owners have stated that the need for gas exists, though they did not wish to pledge themselves at the time of the survey to connect to the system, and since there are 40 more potentially gas-using properties whose owners were not reached by those making the survey, it is found as a fact that the city's estimate of the number of customers as given in the table shown above, is a reasonable one.

The principal deficiency in the city's proof which the Examiner found in his September 22 decision was in the failure to show that the prospective customers would use gas for space heating. It was generally assumed that they would, but the Examiner, for reasons stated, refused to accept that assumption. Examination of the agreements of the persons who have agreed to connect with the proposed system during the first year shows that with a single exception—a new house which will use gas for standby purposes only—everyone signing such an agreement with respect to a residential property has agreed to use gas for space heating. The same is true of the commercial customers with two minor exceptions. The agreements show, moreover, that these signatories were informed of the cost of changing over. The Examiner therefore accepts the city's position as to the probability of changeover, and for that reason is now able to accept the city's estimate of probable average annual use per customer, which is 135 Mcf for residential and 167 Mcf for commercial. Applying these figures to the estimated number of customers shown in the tabulation on page 853 of this decision, the estimated annual consumption is as follows:

	1st year	2d year	3d year
Residential	17,010	18,090	18,900
Commercial	4,676	5,177	5,678
Schools	4,300	4,300	4,300
	25,986	27,567	28,878
Unaccounted for (estimate)	814	833	922
Total Annual Requirements	26,800	28,400	29,800

The third year maximum daily requirement is 329 Mcf.

Based on a minimum charge of $2.50 for the first Mcf each month and 75 cents per Mcf above that, gross revenues would be $22,766 in the first year, $24,182 in the second year and $25,355 each year thereafter. Accepting the city's unchallenged estimates of administrative and distribution expenses[1] and allowing 45 cents per Mcf for the cost of purchased gas, the net revenues of the project available for service of the proposed 30-year 5 percent bond issue would be $8,219 in the first year, $8,852 in the second year and $9,334 in the third year. Interest on the bond issue would be $4,000 for each of the first two years, after which amortization would begin and the total of interest and amortization would vary between $4,900 and $5,950 in each year. The proposal now involves a bond issue of $80,000 by the city instead of the $90,000 contemplated in the proposal heretofore rejected by the Examiner and the Commission. Over the 30-year life of the issue as so reduced, debt service would be covered 1.75 times.

The "10-cent formula" which, all participants agree, is applicable here if the project is approved, would call for an investment of $19,867 by the pipeline, based on an estimated third-year demand of 29,800 Mcf. The formula calls for multiplying the estimated third-year sales (number of Mcf) by 10 cents and dividing the result by 15 percent, which gives the total amount of dollars the pipeline will spend on the lateral. In the present instance, the pipeline would construct 0.92 miles of line, assuming a construction cost of $21,500 per mile.

Economic feasibility was the sole issue raised in the proceeding, and insufficient proof was the sole reason for rejection of the proposal in the decision of September 22. The pipeline does not object to the additional evidence now received, but maintains its original position that the project is not feasible. The Examiner disagrees. In his view, the record now contains sufficient support for the claim of feasibility.

FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in this proceeding, the evidence adduced and the briefs filed, the Presiding Examiner finds and concludes, in addition to the findings and conclusions hereinbefore stated, that:

---

[1] Administrative: first year, $1,387, second year, $1,400, third year, $1,411; distribution, first year, $1,100, second year, $1,150, third year, $1,200.

(1) Michigan Wisconsin Pipe Line Company is a natural-gas company within the meaning of the Natural Gas Act and is subject to the jurisdiction of this Commission.

(2) The City of Wetmore, Kansas, is a municipality legally authorized to engage in the local distribution of natural gas to the public.

(3) The distribution system proposed by the applicant, including the proposed lateral, is immediately adjacent to Michigan Wisconsin Pipe Line Company's transportation facilities and to territory served by that company.

(4) No undue burden would be placed on Michigan Wisconsin Pipe Line Company by requiring it to construct a portion of the lateral as herein provided, and such extension of its facilities, and the sale of natural gas by it to the City of Wetmore as herein provided, are in the public interest and will not impair the pipeline's ability to serve its customers.

ORDER

IT IS ORDERED, that the application of the City of Wetmore be, and it hereby is, granted, and that Michigan Wisconsin Pipe Line Company extend its transportation facilities and establish physical connection of such facilities with the facilities to be constructed by the City of Wetmore, and it is further

ORDERED, that said city be prepared to receive natural gas service from Michigan Wisconsin Pipe Line Company within one year from the date of this order, and it is further

ORDERED, that Michigan Wisconsin Pipe Line Company sell and deliver to said city the volumes of natural gas required to meet the third year maximum daily requirement of 329 Mcf, and it is further

ORDERED, that the extent of the required lateral facilities to be constructed and operated by said pipeline company shall be as determined by its "10-cent formula" as hereinabove set forth, and it is further

ORDERED, that said pipeline company shall report to the Commission in writing the date of commencement of service to the City of Wetmore.

ARTHUR H. FRIBOURG,
Presiding Examiner.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON APPLICATION UNDER SECTION 7(a) OF THE NATURAL GAS ACT

(Issued September 22, 1964)

FRIBOURG, *Presiding Examiner*: The subject of this proceeding is an application by the City of Wetmore, Kansas, (City), for an order under Section 7(a) of the Natural Gas Act directing the Respondent-Intervenor, Michigan Wisconsin Pipe Line Company, (Michigan-Wisconsin), to establish a physical connection with a lateral which the city proposes to construct to serve a proposed municipal gas system, to deliver and sell to the city the gas requirements of the proposed system, and to construct a portion of the lateral in accordance with the pipeline's so-called "10¢ formula." As remarked in *Village of Greenup, Illinois, et al.*, 30 FPC 28, 32:

> **In determining whether such service is necessary or desirable in the public interest, it is the responsibility of the Commission to satisfy itself whether the pipeline company is the applicants' most appropriate source of supply, whether there is a public need for gas service, and a benefit to be derived therefrom in the applicant's community, whether the proposed service can be financed, and whether it is economically sound.**

As to most of these matters there is no issue. The intervenor is obviously the most appropriate source of gas because, as the record shows, the use of either of the two other possible sources would necessitate bringing gas more than three times the 3.85-mile distance here involved. The city's witnesses, including the mayor, testified to the public need for gas service, and a large proportion of the population signed a request that they be supplied with such service. The estimate of the cost of the project is supported by a construction contract, and bond financing has been contracted for in a sufficient amount with a firm long engaged in this type of security flotation. The pipeline's gas supply is fully adequate to meet this small additional demand. The issue here relates to the economic soundness of the project, which is challenged by the intervenor.

The city has a population of approximately 400. The evidence conflicts as to the number of potential residential and commercial customers. The applicant claims 220 potential customers, the pipeline's evidence indicates 197 buildings, of which 159 are residential and 36 commercial, plus two schools, and appears to assume that there is one potential customer per building.

Staff's estimate is based on a portion of the 1963 report (FPC Form 1, page 410-5) of Kansas Power & Light Company, Wetmore's supplier of electricity. That evidence shows 142 as the average number of residential customers and 45 as the average number of commercial customers served with electricity in 1963. If this be taken as a reasonable guide to the number of potential customers the total would be 187. To this, eight should be added, four for electric customers served by an R.E.A. cooperative and four for additional gas meters to serve buildings now served by a single electric meter, making a total of 195. The item of evidence on which this calculation is based was introduced by the pipeline, and the applicant concurs in staff's calculations made from it. Staff classifies the 195 as 161 residential, 32 commercial and two schools. The Examiner finds that this is a reasonable estimate of the total number of potential customers, and of their classification.

The next difference among the parties concerns the percentage of saturation of the potential market which may reasonably be expected. The applicant estimates that 50 percent of the potential residential and commercial customers will be attached in the first year, 70 percent in the second year and 90 percent in the third year. The pipeline's estimate is 50 percent in the first year, 60 percent in the second year and 70 percent in the third year. Staff accepts the applicant's figures.

The applicant's engineer testified that in the projects with which he has been connected and which are in operation there have been attachments of 75 percent to 80 percent the first year and 95 percent to 97 percent in the third year. Later he stated that 50-percent-70-percent-90-percent was "a fair estimate of the number of hook-ons that we will have in those years" based on past experience. His figures were not supported by any work sheets and no over-all presentation was made to show the details of his experience with like systems. His statement was supported, however, by a document signed by residents of the town stating that they would connect to the proposed system during its first year. The document indicates 157 connections, or some 80 percent of the 195 potential customers.

The pipeline's witness testified in support of a 50-percent-60-percent-70-percent saturation ratio for the first three years and cited Maitland, Missouri, as a community comparable to Wetmore. Maitland, like Wetmore, has no industry, and includes many retired persons among its inhabitants. It is of comparable size. After seven years of natural gas service 67 percent of its residential buildings and 50 percent of its commercial buildings are connected. Consumption was somewhat lower in the latest year than during the third year of service.

This witness also gave figures relating to eight customers in Missouri and Iowa—two towns in Missouri plus one company serving three small communities in that state, and five towns in Iowa. In only one case did the actual third-year residential connections reach a 95 percent level, the others ranging from 40 percent to 82 percent of the estimated potential. In the ten communities, 56 percent of the 5,530 potential residential customers had connected by the end of the second year of service, and 63 percent by the end of the third year. (The first-year figures were incomplete.)

Wetmore has shown little, if any, growth. There is some record evidence of residences having been added in the past few years, but the census figures over the longer term have been: 1930, 452 persons; 1940, 425; 1950, 397; 1960 390. There is no showing that the third-year connections are likely to exceed the 80 percent of potential shown by the document referred to above which was signed by the town residents and which indicated 157 requests for service. The long-term growth which might cause a long-term rise in customers seems to be lacking. The Examiner, accepting the estimate of applicant's engineer for the first year, finds, based on all the evidence of record, that the proposed system may be expected to connect 50 percent of the potential customers in the first year, 65 percent in the second year and 80 percent in the third year, as follows:

	1st year	2d year	3d year
Residential	81	105	129
Commercial	16	21	26
Schools	2	2	2

Further differences between the parties arise with respect to the average use to be expected from the prospective customers. The applicant estimates an average annual use of 135 Mcf for residential customers and 167 Mcf for commercial customers. The residential estimate consists of 105 Mcf for space heating and 30 Mcf for general use. The 105 Mcf for space heating is based on the amount used by an average five-room house and it is assumed that all customers would use that amount, on the average, for space heating.

The Examiner is unable to accept this unsupported assumption. The agreement by prospective customers to connect with the proposed system is not the same as an agreement to use gas for space heating. It is reasonable to suppose that a householder now using LP gas for cooking and general use would prefer the reliability of natural gas, but it does not follow necessarily that he would throw out an oil-burning, or even a coal-burning, heating system and make the substantial investment necessary to convert to natural gas for space heating. Even granting that natural gas is cheaper, it seems probable that some persons will refrain from converting, either because of inertia, or unwillingness to spend the money, or for other reasons. To be shrewd and rich makes for economical living, but not everyone behaves as though he were so favored. It is even possible that some people, though switching to natural gas for cooking, will find their present space heating arrangements sufficiently economical and quite satisfactory. The mayor of the city testified that he would spend six or seven hundred dollars to supersede his present oil-burner with natural gas from the proposed system even though his savings would be only $22.50 per year.[1] He conceded, however, that others might be more disposed to compare the investment with the potential savings, but thought that this would not be the general rule. In such a community as Wetmore, which has a large proportion of retired people, it would not be surprising to encounter some reluctance to making a long-term capital investment.

---

[1] Revised evidence submitted after he testified indicates that the saving would be $32.31 per year.

Staff accepts the assumption of a complete changeover and the intervener's brief makes no special point of the matter, merely alluding to it in passing. The Examiner considers that an important hole has been left in the applicant's proof.

The testimony of the pipeline's market witness, Mr. Merton W. Lincoln, though not specifically addressed to this point, indicates that such an assumption was not made when the pipeline was estimating probable demand in the Missouri and Iowa communities previously referred to. In both Bethany, Missouri, and Stansberry, Missouri, where it was estimated that 75 percent of the potential residential customers would be connected by the end of the third year, only 80 percent of that 75 percent were expected to be space heating customers. In Allerton, Iowa, expected residential connections were 74 percent of the potential and only 64 percent of that 74 percent were expected to be space heating customers. In New London, Iowa, 91 percent were expected to connect and only 59 percent of that 91 percent were expected to take gas for space heating.[2] On the other hand, the same pipeline witness stated that in Maitland, Missouri, which was described as comparable to Wetmore, all natural gas customers were space-heating customers, but that was in the seventh year of service in that community. Without drawing any conclusions from these figures with respect to Wetmore, the Examiner believes that the absence of such presentation by the applicant may have resulted in a serious overstatement of the potential market.

The record is bare of material with which the hole could be patched,[3] and even were we to make the assumption made by the parties, it does not appear that the project meets the Commission's standards of feasibility. Using average annual consumption factors of 135 Mcf for residential and 167 Mcf for commercial, which the applicant and the staff use in their calculations but which the Examiner finds have not been adequately proved, the annual requirements would be:

	1st year	2d year	3d year
Residential	10,935	14,175	17,415
Commercial	2,672	3,507	4,342
Schools	4,300	4,300	4,300
	17,907	21,982	26,057
Unaccounted for (3%)	537	659	782
Total annual requirements	18,444	22,641	26,839

The foregoing requirements would produce revenues as shown below, which compare with gas costs, at 45 cents per Mcf, and other expenses, as shown by the applicant, as follows:

---

[2] The actual third-year in two of these communities exceeded, and in two it fell below, the estimates of total connections, but we are not informed of the showing as to space heating customers.

[3] Compare *Village of Franklin, Illinois*, 17 FPC 118, 120, where the prospective customers made written commitments to take specified services, *i.e.*, cooking, water heating and space heating, should natural gas become available, and where the information from each prospective household customer was much more complete than anything in the present record.

	1st year	2d year	3d year
Gross revenue:			
Residential (a)	$9,902	$12,836	$15,770
Commercial (b)	2,340	3,072	3,803
Schools	3,256	3,256	3,256
Total	15,498	19,164	22,829
Operating expenses:			
Cost of gas at 45¢	8,300	10,188	12,078
Administrative expenses	1,340	1,390	1,448
Distribution expenses	1,100	1,150	1,200
Total	10,740	12,728	14,726
Net revenue	4,758	6,436	8,103

(a) Based on an average bill of $122.25 per customer, Exh. 3-I.
(b) Based on an average bill of $146.27 per customer, as indicated in Exh. 3-I (number of customers) and 3-N (commercial revenues).

The foregoing figures indicate a net revenue of $238,078 over a 30-year period. This is the presently-proposed term of the bond issue.[4] Principal and interest over this term would be $179,400, indicating a debt service coverage of 1.33 times. When it is considered that this is overstated to the extent that any of the customers may purchase only for general use and not for space heating, the margin appears too narrow for reasonable safety.

In this connection the considerations set forth in *Village of Franklin, Illinois, supra*, 17 FPC at p. 123, are well worth noting:

> In passing upon the economic feasibility of a natural-gas service project, no fixed rule or set formula can be applied arbitrarily. The feasibility of the project is dependent upon a number of physical, financial, and economic factors, each of which works as an influence to a greater or lesser extent. All of these factors are to be weighed. A deficiency of one feature may perhaps be compensated for by the adequacy of another, so that a project in its broad perspective stands to be successful and to be desirable from the standpoint of the public affected thereby. Also, the force to be accorded an objection to a project may involve countervailing considerations. Again, it must be recognized that engineering evidence cannot ordinarily be perfected to such a degree as completely to be above adverse comment or criticism, and that exact conformance of estimates with subsequent actualities is an ideal circumstance of coincidental occurrence.
>
> At the same time, the basic essentiality of reliable, detailed evidence to support proposals advanced before this Commission is not to be minimized. Particularly is such evidence required where, as here, the projects under consideration are confronted initially with a limited economic potential. Uncertainties in the evidence, and features of a project which are patently weak, assume greater importance where there are no decidedly strong factors to offset these shortcomings. Of special significance are the reasonableness of the judgment factors used in the preparation of an engineering estimate and the effects of these factors in the proposal in its entirety. For it is axiomatic that the reliability of an estimation—be the estimate one of pipeline capacity required, construction cost or peak market demands—must rest upon the soundness of the judgment factors involved. A showing may be so remiss in one essential feature of judgment as to mean that the project would likely prove to be fatally defective.

---

[4] Originally a 20-year bond issue was proposed, but in its reply brief the applicant suggested a lengthening of the term, which had previously been lengthened to 25 years, by an additional 5-year period to 30 years.

It is generally considered that a debt-coverage ratio of 1.5 is required in order to make a showing of economic feasibility where the engineering estimates are reasonably reliable, *Panhandle Eastern Pipe Line Co.*, 15 FPC 1421, 1427-8. In the instant case, certain figures presented by the applicant's engineer did not stand up under cross-examination of the sponsoring witness, who found it necessary to offer substitute presentations for several of the most important exhibits. Upon further examination, inaccuracies were shown in the substituted figures. Neither the original exhibits nor the substitute ones were supported by work papers. On the whole, the presentation was not such as to inspire the firmest confidence in the applicant's engineering estimates.

The applicant found it necessary to increase the term of the proposed bond issue, first from twenty to twenty-five years and then (after the close of the hearing) to thirty years in order to be able to show a 1.5 coverage. Thirty years is the maximum permitted by Kansas law. Although the original proposal contemplated retirement of the entire $90,000 bond issue in twenty years, the suggested retirement schedule submitted with applicant's brief, and received as Exhibit 10, contemplates that more than half of the issue would be outstanding beyond that period. The census figures showing a slow decline in population since 1930 tend to cast doubt on the soundness and desirability of so long a debt having so low an earnings coverage where the evidence of the coverage is so questionable.

The Examiner observes that the project has been contracted for, subject to Commission approval, for over $10,000 less than the estimated cost shown in the application, but that this apparent saving has not resulted in any cut in the size of the bond issue.

An issue was also raised in the pipeline's answer, but not explored at the hearing, as to whether the pipeline would install regulating facilities or would deliver gas at line pressure. The record does not show what the cost of such facilities would be or who would bear it.

In the light of the record as a whole, as it now stands, the Examiner is unable to find that the applicant has shown its proposal to be necessary or desirable in the public interest. It may be, however, that such a showing could be made, either on the basis of the system as presently proposed or on the basis of a redesigning so as to require a smaller bond issue and consequent better coverage. Any new showing should cover not only the matters already discussed but also the cost of the project and the pipeline's share of that cost. Issues as to this were mentioned in the staff brief but were not gone into because staff felt that other deficiencies made such a discussion unnecessary.

FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in this proceeding, the evidence adduced and the briefs filed, the Presiding Examiner finds and concludes, in addition to the findings and conclusions hereinbefore stated, that:

(1) Michigan Wisconsin Pipe Line Company is a natural-gas company within the meaning of the Natural Gas Act and is subject to the jurisdiction of this Commission.

(2) The City of Wetmore, Kansas, is a municipality legally authorized to engage in the local distribution of natural gas to the public.

(3) The distribution system proposed by the applicant, including the proposed lateral, is immediately adjacent to Michigan Wisconsin Pipe Line Company's transportation facilities and to territory served by that company.

(4) No undue burden would be placed on Michigan Wisconsin Pipe Line Company by the granting of the application except in respect to the economic feasibility of the proposed construction.

(5) The applicant has failed to show that the granting of the application is necessary or desirable in the public interest, in that it has failed to show that the proposal is economically feasible.

ORDER

IT IS ORDERED, that the application of the City of Wetmore be, and it hereby is, denied, without prejudice, however, to the filing of any other and different application, and it is further

ORDERED, that if the applicant desires an opportunity to present further evidence in support of the economic and financial feasibility of the present application, it shall, within 20 days from the date of this order, file a statement with the Commission making known such desire and stating fully the nature of the evidence it wishes to present. Any such statement shall be served on the other participants not later than the time of filing, and they may answer it within ten days of service.

ARTHUR H. FRIBOURG,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

AMERICAN LOUISIANA PIPE LINE COMPANY, DOCKET NO. CP65-276

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 23, 1965)

On March 8, 1965, American Louisiana Pipe Line Company (Applicant) filed in Docket No. CP65-276 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the one-year period commencing June 12, 1965, and operation of routine gas purchase facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new and existing supplies of natural gas in producing areas generally coextensive with its system.

The total cost of the facilities covered by this application will not exceed a maximum of $2,000,000, with no single project to exceed a cost of $500,000, which costs are proposed to be financed with funds from internal sources.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 21, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, American Louisiana Pipe Line Company, a Delaware corporation having its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 1, 1954, in Docket No. G-2306, *et al.* (13 FPC 380).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 157.7(b)(3) of the Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(7) The authorization hereinafter granted should be limited to construction during the one-year period commencing June 12, 1965, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $2,000,000, with no single project to exceed a cost of $500,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, American Louisiana Pipe Line Company, to construct during the one-year period commencing June 12, 1965, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(b)(3) of the Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the one-year period commencing June 12, 1965, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $2,000,000, with no single project to exceed a cost of $500,000.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

ARKANSAS LOUISIANA GAS COMPANY, DOCKET NO. CP65-256

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 23, 1965)

On February 24, 1965, Arkansas Louisiana Gas Company (Applicant) filed in Docket No. CP65-256 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities necessary to sell and deliver natural gas, on an interruptible basis, to two industrial customers, all as more fully set forth in the application in this proceeding.

Applicant proposes to construct and operate approximately 16,000 feet of 4-inch lateral line from its 18-inch Line "A" to the site of the plant of Robbins Products, Inc. (Robbins) near Prescott, Nevada County, Arkansas, together with the necessary metering and regulating facilities. Applicant and Robbins have entered into a contract, dated January 28, 1965, providing for the proposed sale. Robbins will utilize up to 3,000 Mcf per day and approximately 600,000 Mcf annually as fuel gas for the manufacturing process of vinyl floor coverings and associated products.

Applicant also proposes to construct and operate 3,000 feet of 2-inch lateral line from its 10-inch Line "KT-1" to the site of the plant of Great Lakes Chemical Corporation (Great Lakes) near El Dorado, Union County, Arkansas, together with the necessary metering and regulating facilities. Applicant and Great Lakes have entered into a contract dated January 11, 1965, providing for the proposed sale. Great Lakes will utilize up to 1,100 Mcf per day and approximately 360,000 Mcf annually as fuel gas and raw material in the manufacturing process of bromines and allied products.

The total estimated cost of all of Applicant's proposed facilities is $47,540, which cost will be financed with cash on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 21, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Arkansas Louisiana Gas Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of January 26, 1943, in Docket No. G-252 (3 FPC 910).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and delivery of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the

services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) The certificate issued hereinafter is granted on the express condition that the interruptible service authorized should be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Arkansas Louisiana Gas Company to construct and operate the proposed facilities and to transport and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the proposed transportation and delivery of natural gas shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

(D) The certificate issued hereby is granted on the express condition that the interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

FLORIDA GAS TRANSMISSION COMPANY, DOCKET NO. CP65-253

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 23, 1965)

Florida Gas Transmission Company (Applicant) filed an application on February 23, 1965, in Docket No. CP65-253, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 6.63 miles of 6⅝-inch O.D. lateral pipeline for the transportation and delivery of natural gas to a direct interruptible customer, Central Phosphates, Inc., in Hillsborough County, Florida, all as more fully set forth in the application.

Applicant proposes to construct and operate the said facilities to deliver to

Central Phosphates up to 1,500 Mcf of natural gas daily and up to 400,000 Mcf annually on a so-called preferred interruptible basis under the terms of a contract between the Applicant and Central Phosphates dated January 28, 1965.[1] The natural gas will be used as fuel in the processing of phosphate-bearing rock and ammonia in the manufacture of phosphatic fertilizer in Central Phosphates' plant.

The estimated cost of the facilities necessary to the transportation and delivery of the proposed volumes of natural gas to Central Phosphates is $147,700, which will be defrayed from Applicant's current funds.

The natural gas requirements of Central Phosphates' plant will be subject to curtailment when necessary to meet the Applicant's firm service requirements. An appropriate condition to provide for such curtailment will be attached to the certificate issued in this proceeding.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 21, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Florida Gas Transmission Company, a Delaware corporation having its principal place of business in Winter Park, Florida, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued July 3, 1963, in Docket No. CP63-277 (30 FPC 27).

(2) The proposed construction and operation of facilities and transportation of natural gas, as hereinbefore described and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and transportation of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the certificate be granted on the express condition that the interruptible service authorized herein should be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to the Applicant in this proceeding, authorizing the construction and operation of facilities and the transportation of natural gas as more fully described in the application in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

---

[1] The contract provides for a rate of 40.0 cents per Mcf.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the transportation of natural gas authorized in paragraph (A) above shall commence as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 6 months from the date on which this order issues.

(D) The certificate issued in paragraph (A) above is granted on the express condition that the interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black

HASSIE HUNT TRUST, CI65–596; HUNT OIL COMPANY, CI65–597; PLACID OIL COMPANY, CI65–598

ORDER GRANTING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 23, 1965)

On December 24, 1964, Placid Oil Company (Placid), Hunt Oil Company (Hunt) and Hassie Hunt Trust (Trust) filed applications, as supplemented on March 5, 1965, pursuant to Section 7 of the Natural Gas Act for authorization to sell to American Louisiana Pipe Line Company (American-Louisiana) natural gas produced from certain acreage located offshore Louisiana and to transport and deliver this gas to American-Louisiana at a specified delivery point on-shore in Saint Mary's Parish, Louisiana.[1]

Under the terms of the application American-Louisiana is required to pay the aforementioned producers 19 cents for each Mcf of gas taken pursuant to this agreement during the first five year period following the date of initial delivery. The agreement between the producer-applicant and the pipeline purchaser also provides that the base price of 19 cents per Mcf shall be increased 1 cent per Mcf at the beginning of each of the Second, Third and Fourth five-year periods following the period of initial delivery. These prices include present taxes, but American-Louisiana is to reimburse the producer applicants for 50 percent of any new or additional taxes.

The contract contains a proportional downward Btu adjustment provision from a base of 1000 Btu per cubic foot, but contains no provision for an upward Btu adjustment.

The daily contract quantity for the 1st three years from the date of initial delivery is as follows:

Year after initial delivery:	*Contract daily quantity Mcf*
1st	25,000
2d	50,000
3d	75,000

---

[1] Under the terms of a contract dated June 25, 1964, Placid, Trust and Hunt dedicated the natural gas reserves underlying Blocks 62, 63, 76, 77, 198, 199, 202 and 203 in the Eugene Island Area, Off-shore, Louisiana, to American-Louisiana.

After the end of the above-noted third (12) month period, the daily contract quantity shall be the quantity equal to one millon (1,000,000) cubic feet for each eight billion (8,000,000,000) cubic feet of reserves. The contractual arrangements between the parties also make provisions for periodic reserve redeterminations. However, the pipeline purchaser is afforded the option of limiting its takes predicated upon a redetermination ceiling fixed at six hundred billion cubic feet of natural gas. In the event that American-Louisiana decides not to take volumes that can be predicated upon a redetermination that estimates the reserves in excess of six hundred billion cubic feet, the additional take that would correspond to this excess must be released by American-Louisiana and the applicant-producers are free to sell this amount of gas to another purchaser.

The contract also contains take or pay provisions predicated upon 90 percent of the cumulative annual contract quantity; however, the purchaser can make up volumes that it has paid for but not taken over the life of the contract. Buyer may request and seller agrees to deliver 135 percent of the daily contract quantity. In the event that the seller fails to meet the above obligation, the daily contract quantity may be redetermined.

The producer-applicants request authorization to construct facilities capable of transporting a maximum daily capacity of approximately 200,000 Mcf of gas and 10,000 barrels of oil from the Block 77 and Block 198 Fields, Eugene Island Offshore, Louisiana, to a specified point in Section 48, Township 15 South, Range 11 East, Saint Mary's Parish, Louisiana. The producer-applicants propose to construct a two phase 20-inch diameter pipeline 76 miles in length in order to transport the aforementioned production from its offshore platforms to the specified delivery point in Saint Mary's Parish, Louisiana.

The initial base price requested by the producer-applicants herein is 19 cents per Mcf. In *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, Opinion No. 436, 32 FPC 254, issued on July 23, 1964, the Commission found that its prior determination that the in-line initial price of 18.5 cents per Mcf should apply to Offshore Louisiana was proper. In its Opinion No. 437, *The Superior Oil Company*, Docket No. G–6067, 32 FPC 241, issued on the same date, the Commission refused to certificate a sale at a premium of 1.5 cents over the in-line price by reason of the producers transporting the gas some 28 miles to the pipeline on shore instead of making the sale at the off-shore platform.

The circumstances underlying the instant proceedings are not comparable to those relating to Superior. The pipeline to be built is more than two and a half times as long as that contemplated in the Superior case and the price exceeds the normal in-line price by only ½ cent; unlike the situation with Superior we have here a very real question of whether the gas would be dedicated to interstate commerce if a pipeline had to go to the expense of bringing it ashore. We are of the opinion that the initial lease price of 19 cents per Mcf reflected in the purchase gas contract between producer-applicants and American-Louisiana is not out of line with the 18.5 cent price we found to be the appropriate in-line price for sales on the Outer Continental Shelf not involving such major transportation activities by the producer. The Commission will allow this same initial base price to producers having production in such distant offshore fields but who as part of the transaction agree to transport the gas for substantial distances for delivery to a pipeline on shore.

The Commission finds:

(1) Hassie Hunt Trust, Placid Oil Company, and Hunt Oil Company are "natural-gas companies" within the meaning of the Natural Gas Act, subject to the jurisdiction of the Commission.

(2) The proposed sales of natural gas by Hassie Hunt Trust, Hunt Oil Company, and Placid Oil Company are subject to the jurisdiction of the Commission and such sales, together with the construction and operation of any facilities necessary therefore are subject to the jurisdiction of the Commission.

(3) The sale proposed by Hassie Hunt Trust, Hunt Oil Company and Placid Oil Company, together with the construction and operation of any facilities, subject to the jurisdiction of the Commission and necessary therefor, are required by the public interest upon the conditions set forth below, and certificates should be issued as ordered below.

(4) The facilities described above will be used for the transportation of gas in interstate commerce and their construction and operation are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) Hassie Hunt Trust, Hunt Oil Company and Placid Oil Company are able and willing to do the acts and perform the services proposed and to conform to the provisions of the Natural Gas Act and the rules and regulations thereunder.

(6) The proposed construction and operation of facilities and transportation proposed by Hassie Hunt Trust, Hunt Oil Company, and Placid Oil Company is required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

The Commission orders:

(A) Certificates of public convenience and necessity are hereby issued to Hassie Hunt Trust, Hunt Oil Company, and Placid Oil Company for the sale of natural gas in interstate commerce for resale as proposed in their applications together with the construction and operation of any facilities subject to the jurisdiction of this Commission, all as herein described. The certificates issued by this paragraph are not transferable and shall be effective only so long as Hassie Hunt Trust, Hunt Oil Company and Placid Oil Company continue the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission and shall be accepted in writing and under oath within thirty days after the issuance of this order.

(B) The grant of the certificates issued in paragraph (A) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the respective Applicants. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contracts herein involved. Nor shall the grant of the certificates aforesaid for service to the particular customers involved imply approval of all of the terms of the respective contracts, particularly as to the cessation of service upon termination of said contracts, as provided by Section 7(b) of the Natural Gas Act. Nor shall the grant of the certificates aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sales of natural gas subject to said certificates.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

LONE STAR GAS COMPANY, DOCKET NO. CP64-268

ORDER AMENDING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 23, 1965)

On March 11, 1965, Lone Star Gas Company (Applicant) filed a motion to amend the certificate of public convenience and necessity issued in Docket No. CP64-268 on August 10, 1964, 32 FPC 569, by enlarging to a maximum of 6,000 Mcf of natural gas per day the authorization for the transportation, sale and delivery to Applicant's existing customer, Dierks Forests, Inc. (Dierks), at its insulation board manufacturing plant near the town of Broken Bow, Oklahoma, as set forth more fully in the application.

The certificate issued by the Commission on August 10, 1964, authorized Applicant to deliver and sell up to 4,740 Mcf of natural gas per day to Dierks and to construct and operate facilities through which such gas would be delivered. Dierks has recently expanded its plant to two and one-half times its former production capacity and has requested Applicant to supply natural gas in volumes up to 6,000 Mcf per day. The gas will be used for the same purposes as initially proposed, which are for processing, space heating and as fuel in a gas fired boiler. No additional gas sales facilities will be constructed by Applicant as a result of this increase.

Due notice of the filing of the motion to amend was published in the Federal Register on March 25, 1965 (30 F.R. 3892). No protest, petition to intervene, or notice of intervention has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order in Docket No. CP64-268 issued August 10, 1964, be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order in Docket No. CP64-268 issued August 10, 1964, be and the same is hereby amended by increasing the authorization granted to Lone Star Gas Company to transport and deliver on an interruptible basis, up to a maximum of 6,000 Mcf of natural gas per day to Dierks Forests, Inc.

(B) The certificate of public convenience and necessity, as amended herein, is granted on the express condition that the interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contract maximum delivery obligations of Lone Star Gas Company for firm service to its customers.

(C) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

THE MANUFACTURERS LIGHT AND HEAT COMPANY, DOCKET NO. CP65-264

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued April 23, 1965)

On March 2, 1965, The Manufacturers Light and Heat Company (Applicant) filed in Docket No. CP65-264 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon certain natural gas facilities and for a certificate of public convenience and necessity authorizing the construction and operation of certain other facilities, all as more fully set forth in the application.

Specifically, Applicant seeks permission and approval or authorization to: (1) construct and operate 3.03 miles of 12-inch pipeline in Lawrence County, Pennsylvania, replacing approximately the same length of 8-inch pipeline; (2) abandon Compressor Units Nos. 1 and 4 totaling 1,000 horsepower at its existing 2,000 horsepower Ellwood City Compressor Station in Beaver County, Pennsylvania; (3) abandon 15.48 miles of 8-inch transmission line in Adams and York Counties, Pennsylvania; and (4) abandon .93 miles of 10-inch transmission line in Marshall County, West Virginia.

Abandonment of the aforementioned pipeline is required due to the age and deteriorated condition thereof, and such abandonment will not impair Applicant's ability to provide service to its customers since it has other lines which will transport the gas formerly transported by the lines to be abandoned. The compressor units to be abandoned are no longer needed since Applicant's pressure requirements can be met from existing line pressures and from the remaining compressors at the Ellwood City Station. The greater portion of all facilities to be abandoned or replaced will be salvaged.

The proposed replacement line will assure dependable service to Applicant's existing markets and will provide a slight increase in capacity for future market requirements.

Total estimated cost of Applicant's proposed construction is $163,000, and will be financed through the issuance and sale of installment promissory notes or common stock to The Columbia Gas System, Inc., parent company of Applicant.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 21, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, The Manufacturers Light and Heat Company, a Pennsylvania corporation having its principal place of business in Pittsburgh, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 29, 1944, in Docket No. G-593, *et al.* (4 FPC 821).

(2) The facilities proposed to be constructed as hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction

of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) The facilities proposed to be abandoned, as hereinbefore described, as more fully described in the application in this proceeding, are subject to the jurisdiction of the Commission and the abandonment thereof by Applicant is subject to the provisions of Subsection (b) of Section 7 of the Natural Gas Act.

(7) The proposed abandonment by Applicant is permitted by the public convenience and necessity and approval therefor should be granted as hereinafter ordered.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, The Manufacturers Light and Heat Company, to construct and operate the facilities hereinbefore described, as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date on which this order issues.

(D) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, as more fully described in the application in this proceeding, be and the same are hereby granted.

(E) Applicant shall advise the Commission of the date of the abandonment of said facilities within 10 days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

MONTANA-DAKOTA UTILITIES CO., DOCKET NO. CP65-251

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 23, 1965)

On February 23, 1965, Montana-Dakota Utilities Co. (Applicant) filed in Docket No. CP65-251 an application pursuant to Section 7(c) of the Natural

Gas Act, as implemented by Section 157.7(c) of the Regulations under the Act, for a certificate of public convenience and necessity authorizing the construction during the calendar year 1965 and the operation of natural gas facilities for the sale of natural gas to direct customers and existing distributors for resale and for miscellaneous rearrangements, all as more fully set forth in the application in this proceeding.

Applicant proposes to construct a maximum of 8 lateral or loop lines of up to 6-inch diameter pipe with the maximum length being 15 miles and a maximum of 11 taps and meters in order to transport and sell natural gas previously authorized under certificates for transportation or sale to existing distributors at rates on file with the Commission, for resale in existing market areas, and in order to deliver natural gas to direct consumers for seasonal industrial purposes. The proposed facilities will also enable Applicant to make a maximum of 2 miscellaneous rearrangements.

The deliveries to any one consumer by means of the proposed facilities will not exceed 100,000 Mcf per year and none of the gas delivered will be used by any consumer for boiler fuel purposes as defined by the Commission in Section 157.7(c) of its Regulations under the Act.

The total estimated cost of the proposed facilities will not exceed a maximum of $300,000, which cost will be financed with internally generated funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 21, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Montana-Dakota Utilities Co., a Delaware corporation having its principal place of business in Minneapolis, Minnesota, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 22, 1946, in Docket Nos. G-220 and G-402 (5 FPC 64).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and/or sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(6) The authorization hereinafter granted should be limited to construction during the calendar year 1965 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $300,000, with the total deliveries to any one customer not to exceed a maximum of 100,000 Mcf of natural gas per year.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter a statement in compliance with Subparagraph (8) of Section 157.7(c) of the Commission's Regulations under the Natural Gas Act.

(8) The certificate issued hereinafter should be conditioned upon Applicant's compliance with the provisions of Subparagraph (7) of Section 157.7(c) of the aforesaid Regulations.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Montana-Dakota Utilities Co., to construct during the calendar year 1965 the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities to sell natural gas to direct customers and to distributors for resale as hereinafter provided.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(C) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1965 and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $300,000, with the total deliveries to any one customer limited to a maximum of 100,000 Mcf of natural gas per year.

(D) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Subparagraph (8) of Section 157.7(c) of the Commission's Regulations under the Natural Gas Act.

(E) The certificate issued by paragraph (A) above is expressly conditioned upon Applicant's compliance with the provisions of Subparagraph (7) of Section 157.7(c) of the aforesaid Regulations and, further, shall not entitle any industrial customer to whom firm deliveries are authorized herein to any priorities or rights to additional gas for meeting any future increases in their requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP65-266

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 23, 1965)

On March 4, 1965, Panhandle Eastern Pipe Line Company (Applicant) filed in Docket No. CP65-266 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and the transportation of natural gas in interstate commerce, all as more fully set forth in the application.

Applicant seeks authorization to construct and operate a measuring and regulating station in Sangamon County, Illinois, for the delivery of up to 7,000 Mcf of natural gas per day on an interruptible basis to Commonwealth Edison Company (Commonwealth) for use in the latter's proposed Kincaid electric generating station to be located near Tovey, Illinois. Applicant states that the gas will be used by Commonwealth for boiler ignition.

Total estimated cost of Applicant's proposed construction is $25,000, and will be financed with funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 21, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Panhandle Eastern Pipe Line Company, a Delaware Corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G–254 (4 FPC 1081).

(2) The proposed construction and operation of facilities, and the transportation and delivery of natural gas by Applicant to Commonwealth Edison Company as hereinbefore described, as more fully described in the application in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and transportation and delivery of natural gas are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in Paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) The certificate issued hereinafter should be granted on the express condition that the interruptible service authorized therein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, Panhandle Eastern Pipe Line Company, authorizing the construction and operation of facilities and the transportation and delivery of natural gas in interstate commerce to Commonwealth Edison Company, as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations, within one year from the date on which this order issues.

(D) The certificate issued hereby is granted on the express condition that the interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP65–274

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 23, 1965)

On March 8, 1965, Panhandle Eastern Pipe Line Company (Applicant) filed in Docket No. CP65–274 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities for the delivery of natural gas to Pitman-Moore Division of The Dow Chemical Company (Dow) in Boone County, Indiana, all as more fully set forth in the application.

Applicant proposes to construct and operate approximately 1,800 feet of 6-inch pipeline and to deliver to Dow up to 3,000 Mcf of natural gas per day on an interruptible basis for use in direct-fired equipment and for steam boiler fuel. The proposed facilities are estimated to cost $35,600 which will be financed from funds on hand.

After due notice no petition to intervene, notice of intervention, or protest to the granting of the application has been received.

At a hearing held on April 21, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G–254 (4 FPC 1081).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the transportation of natural gas by Applicant are required by the public convenience

and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Sections 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, Panhandle Eastern Pipe Line Company, to construct and operate facilities and to transport natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The certificate issued hereby is granted on the express condition that the interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

(D) The facilities herein authorized shall be completed and placed in actual operation as required by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within one year from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

PORTLAND GENERAL ELECTRIC COMPANY, PROJECT NO. 2195

ORDER AMENDING LICENSE (MAJOR)

(Issued April 23, 1965)

On August 8, 1963, as supplemented on December 3, 1964, and on February 15, 1965, applications were filed under Section 6 of the Federal Power Act (Act) by Portland General Electric Company (Applicant) for amendment of its license issued January 18, 1957 (17 FPC 58) for Project No. 2195, known as the North Fork Hydroelectric Project, located on Clackamas River in Clackamas County, Oregon. The August 8, 1963 and December 3, 1964 filings seek to include in the license the Faraday and River Mill hydroelectric developments located downstream from the North Fork dam. The February 15, 1965 filing seeks authorization to reconstruct the Cazadero diversion dam, to be known as Faraday, which failed January 29, 1965 from flood damage.

The North Fork, Faraday and River Mill hydroelectric developments will be operated hydraulically as a single project so as to achieve maximum utilization of the water power involved. The three developments will be operated from the Faraday powerhouse. All of the fish passage facilities, except those for the River Mill development, are under the present North Fork license.

The Faraday development, which included 3 generating units, a powerhouse and intake facilities to accommodate a total of 5 generating units, a turbine and motor-driven exciter, a fish ladder, and appurtenant facilities, was initiated and subsequently operated by a series of three predecessors of Applicant, and was put into operation in 1907. Since the original installations, replacements and additions have been made of various facilities including three additional generating units, the final of which, a semi-outdoor 19,200-kw unit, was installed in 1958.

Original construction of the River Mill development was undertaken by a predecessor of Applicant with initial operation commencing in November 1911. The plant originally contained three generating units, with provision for two additional units. Subsequent additions and replacements have been made, the final of which, a 5,000-kva unit (No. 5), was installed in 1951 and 1952.

The February 15, 1965 filing seeks to replace the former timber crib rock-filled Cazadero dam by one presently planned as a variable radius concrete arch dam at elevation 526 feet, about 455 feet long and 71 feet high and incorporating an overflow spillway in the 315 feet arch section. Applicant's proposed construction schedule for the reconstructed dam is as follows: solicit bids about April 1, 1965; contract to be let and construction to commence about May 15, 1965; with completion of the dam by November 1, 1965.

The Department of the Army, in commenting on the applications, has advised that Applicant's existing structures are satisfactory insofar as the interest of navigation is concerned and insertion in the license of any special conditions to protect the interest of navigation is not deemed necessary; and that since Applicant indicates no change in operation, no additional comments are considered necessary. However, the Department, pointing to the potential damage to levee structures and private property that could occur during major floods, suggested for inclusion in any amendment of the license an article to the effect that North Fork, Faraday and River Mill developments be operated in such a manner that stages no higher than natural flood peak stage occur downstream from the River Mill dam development.

The Department of the Interior, in commenting on the applications, recommended for inclusion in any license for the project terms and conditions in the interests of fish and wildlife and recreation usually included in licenses for the type of project herein under consideration, and a special condition relating to an extension of the "North Fork Evaluation Program" to include cooperative studies of the existing fish passage facilities at River Mill.* The Department also recommended an additional article for inclusion in any amendment for construction, maintenance and operation by Applicant or on its behalf of permanent upstream and downstream fish-passage and protective facilities as a part of the Faraday Diversion Dam according to specifications determined cooperatively by Applicant and named State and Federal agencies. Upon Applicant's written objection to the recommended article, discussion was had between our staff and Fish and Wildlife Service representatives. Article 29 herein provides adequately for the protection of fish passage at the project.

The Department of Health, Education, and Welfare has advised that the project does not significantly affect water supply or water quality control nor is it expected that the granting of a license [amendment] will create or intensify vector problems.

On December 2, 1963, the State of Oregon acting by and through its State Game Commission and its Fish Commission of Oregon filed a joint petition to intervene in this proceeding. By letter dated March 3, 1965, Petitioners advised that the special article recommended by Interior for inclusion in any amendment (as set forth in Article 43 herein) appears adequate for the purpose intended, and that Petitioners agree to the amendment of the North Fork project as currently proposed and withdraw the objections expressed in their petition to intervene. At the same time, however, Petitioners expressed their desire to remain a party to the proceeding to insure adequate opportunity to communicate with Applicant, the Federal Power Commission, and other parties in all matters of mutual interest. We are by separate order granting the joint petition to intervene.

---

*The North Fork Evaluation Program was established under Article 33 of the license pursuant to the Commission's order issued October 22, 1959 [Unreported].

By letters dated February 11 and March 29, 1965, Representative Beulah Hand, State of Oregon House of Representatives, informally protested the replacement of the Cazadero dam as a single-purpose dam on the Clackamas River, stating that; "High priority consideration for flood control installations is an urgent need, hence this request that permission for replacement of the Cazadero dam as a single-purpose unit be denied until adequate inquiry is conducted into possible utilization of storage for flood control purposes." In this connection, the Corps of Engineers, District Engineer, Portland, Oregon, has advised by letter dated March 10, 1965, that preliminary investigations indicate that there are no sites in the reach of the river that would be affected by replacement of the Cazadero dam which would be suitable for flood control storage, although two or three sites upstream from the North Fork project have a physical potential.

The project works other than the proposed reconstructed Cazadero dam are safe and stable. The Exhibit L drawings for the latter dam are of a preliminary nature and we are providing herein for submission of the final design drawings for Commission approval prior to commencement of such reconstruction.

By Article 42 herein we are requiring Applicant to file an Exhibit R conforming to the requirements of Section 4.41 of the Commission's Regulations, after consultation with appropriate Federal, State and local agencies. In addition, we are including herein terms and conditions in the interests of fish and wildlife and recreation usually included in licenses for the type of project herein under consideration.

This amendment will increase the authorized installed capacity of the project by 19,050 kw for the River Mill development and by 34,450 kw for the Faraday development, or a total of 71,300 horsepower for annual charge purposes. The presently authorized installation of the North Fork development remains at 51,200 horsepower for annual charge purposes. Therefore, we are changing the authorized installation of the entire project for annual charge purposes to 122,500 horsepower.

The Commission finds:

(1) Public notices of the applications have been given. Except for the aforementioned joint petition to intervene and informal protest, no protests or petitions to intervene have been received.

(2) There are no conflicting applications for preliminary permit or license pending before the Commission. The Faraday and River Mill developments do not affect a Government dam.

(3) The increased amount of annual charges to be paid under the license as herein amended for the purpose of reimbursing the United States for the costs of administration of Part I of the Act is reasonable.

(4) The exhibits described in paragraph (A) below conform to the Commission's rules and regulations and should be approved as part of the license as amended, and superseded Exhibit K (FPC Nos. 2195-32, -34 and 35), now part of the license should be excluded therefrom.

The Commission orders:

(A) Effective as of April 1, 1965, Project No. 2195 shall consist of:

(a) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the Licensee or by the United States; such project area and project boundary being more specifically shown and described by the following exhibits which formed a part of the application for license and applications for amendment of license:

Exhibit	Sheet No.	FPC No. 2195	Showing
J (Revised)		-31	General map.
	NORTH FORK DEVELOPMENT		
K	1 (Rev. 11/24/64) 2 (Rev.) 3 (Rev. 11/24/64) 4 (Rev. 11/24/64) 5 (Rev.)	-61 -33 -62 -63 -36	Project area and boundary. North Fork Reservoir.
	TRANSMISSION FACILITIES		
K	6 (Rev.) through 11 (Rev.)	-37 through -42	Project transmission line.
	FISH FACILITIES		
K	12 (Rev.) 13 (Rev.) 14 (Rev.)	-43 -44 -45	Project fishladder. Project downstream. Migrant conduit.
	FARADAY DEVELOPMENT		
K	17 (Rev.) 18 (Rev.) 19 (Rev.)	-66 -67 -68	Faraday development. Faraday development. Faraday development.
	RIVER MILL DEVELOPMENT		
K	15 (Rev.) 16 (Rev.)	-64 -65	River Mill development. River Mill development.

(b) All project works consisting of:

North Fork Development:

A concrete variable radius arch dam in Section 11, T. 4 S., R. 4 E., W.M., constructed to elevation 670 feet with a chute spillway adjacent to the right abutment having fixed crest at elevation 630 feet and control gates in the spillway section to raise the reservoir to normal pool elevation 665 feet; a reservoir about 4 miles long containing 7,700 acre-feet usable storage capacity; two steel penstocks through the base of the dam leading to the powerhouse; a powerhouse at the base of the dam with installation of two units each consisting of a 34,500 horsepower turbine connected to 19,200 kilowatt generator; a fish ladder; and appurtenant facilities;

Faraday Development:

A proposed variable radius concrete arch dam about 71 feet high to elevation 526 feet, with crest length of about 455 feet (including thrust blocks to elevation 552 feet); an overflow type spillway occupying the 315-foot arch section, with capacity of 150,000 cfs at pool elevation 548 feet; a reservoir with capacity of

550 acre-feet; a concrete-lined tunnel 2,450 feet long; an unlined canal 3,300 feet long leading to a forebay; six penstocks supplying five generating units totaling 15,250 kw in an indoor powerhouse and one 19,200-kw unit in an outdoor powerhouse; and appurtenant facilities; and

River Mill Development:

An "Ambursen" hollow type reinforced concrete dam 936 feet long and 85 feet high; a reservoir with capacity of 12,200 acre-feet at normal pool elevation 389 feet; an indoor powerhouse containing five generating units having a total capacity of 19,050 kw; fish facilities; and appurtenant facilities;

Transmission Facilities:

1. The three single-phase 17,500 kva, 120 Y/69.3/13.2 kv transformers which function as the step-up substation for the North Fork plant;
2. The single circuit 115 kv transmission line from the North Fork substation to a switchyard located near Faraday;
3. A 115-kv switchyard near Faraday;
4. The generator leads to the 57 kv step-up substation at Faraday and River Mill and the 57 kv step-up facilities at each of these two developments;
5. Two 115 kv transmission lines from the Faraday switchyard to Oregon City and appurtenant facilities;

the location, nature and character of which are more specifically shown and described by the exhibit hereinbefore cited and by certain other exhibits which also formed part of the application for license and which are designated and described as follows:

EXHIBIT L

NORTH FORK DEVELOPMENT

Sheet No.	FPC No. 2195	Showing
1 (6-4-56) (Revised)	-14	General plan.
2 (6-4-56) (Revised)	-15	General plan, sections.
3 (6-4-56) (Revised)	-16	Arch Dam.
4 (6-4-56) (Revised)	-17	Powerhouse plans and sections.
5 (6-4-56) (Revised)	-18	Cross section of powerhouse and intake.

EXHIBIT M

Statement in one sheet entitled, "General Description of and Specifications for Mechanical, Electrical and Transmission Equipment", received in the Commission June 28, 1956.

FISH FACILITIES

Drawing No.	FPC No. 2195	Showing
DE-3227	-24	Fish ladder between upstream migrant structure and fish trap.
G-146620-2	-25	Upstream migrant structure and fish ladder.
G-146621-2	-26	Upstream migrant structure and fish ladder.
G-6711-12	-27	Upstream migrant structure.
G-155194	-28	Fish provisions, downstream migrant facilities.
G-155195	-29	Fish provisions, downstream migrant facilities.
G-6711-22A	-30	General plan and profile, Cazadero-North Fork fish ladder.

EXHIBIT L

Faraday Development:

Sheet No.	FPC No. 2195	Showing
16	–75	General plan.
17	–76	General plan sections.
18	–77	General plan and sections.
19	–78	Tunnel and canal plan and profile.

EXHIBIT M–1

Statement in four typewritten sheets entitled, "General Description of Mechanical and Electrical Equipment—Faraday Development", received in the Commission August 8, 1963.

EXHIBIT L

RIVER MILL DEVELOPMENT

Sheet No.	FPC No. 2195	Showing
10 (Revised)	–69	General plan.
11 (Revised)	–70	Powerhouse plan and section.
12	–71	Dam and powerhouse sections.
13	–72	Penstock bay section.
14	–73	Draft tube and transformer bay section.
15	–74	Powerhouse buttress and spillway details.

EXHIBIT M–2

Statement in three typewritten sheets entitled, "General Description of Mechanical and Electrical Equipment—River Mill Development", received in the Commission August 8, 1963.

(c) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(B) Article 29 of the license is amended to read as follows:

Article 29. The Licensee shall construct, operate and maintain such protective devices, including fish passage facilities, and comply with such reasonable modifications in project structures and operation in the interest of fish and wildlife resources in connection with the project as may be subsequently prescribed by the Commission upon recommendation of the Secretary of the Interior, the United States Forest Service and the Oregon Fish and Game Commissions. The design and details for fish passage facilities to be constructed shall be determined cooperatively by Licensee, the Oregon Fish Commission, the Oregon State Game Commission, and the U.S. Fish and Wildlife Service in accordance with the existing agreement dated August 21, 1956, with the final design drawings to be approved by the Commission. If the Licensee and the agencies are unable to reach agreement on facility design, the Commission reserves the right to make the final determination after notice and opportunity for hearing. In addition, the Commission may, upon recommendation of the aforesaid agencies, require the Licensee, after notice and opportunity for hearing, to reserve from public access such project waters and adjacent project lands owned by the Licensee and to acquire or arrange for the acquisition of such other lands as may be reasonably necessary for the protection and management of fish and wildlife resources affected by the project.

(C) Article 32 of the license is amended to read as follows:

Article 32. The Licensee shall pay to the United States the following annual charges effective as of April 1, 1965:

(i) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. The authorized installed capacity for such purpose is 122,500 horsepower.

(ii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands, exclusive of those lands used for transmission line right-of-way, $271.56; and

(iii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands used for transmission line right-of-way only, $0.96.

(D) The following articles are hereby added to the license:

Article 34. The Licensee shall submit in accordance with the Commission's Rules and Regulations, revised Exhibit L drawings for the Faraday dam and Licensee shall not begin construction of the project dam until the Commission approves the Exhibit.

Article 35. The construction, operation, and maintenance of the project and any work incident to additions or alterations shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, San Francisco, California, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of the project. Construction of the project works or any feature thereof shall not be initiated until the program of inspection for the project works or any such feature thereof has been approved by said representative. The Licensee shall also furnish to said representative such further information as he may require concerning the construction, operation, and maintenance of the project, and of any alteration thereof, and shall notify him of the date upon which work will begin, and as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall allow him and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties.

Article 36. Within six month after the date of this order amending the license for Project No. 2195, the Licensee shall submit for Commission approval plans to increase the spillway capacity at the River Mill Development to 150,000 cubic feet per second. When the Commission has approved these plans, Licensee shall commence construction as soon as river and weather conditions permit and shall complete the work within one year from the date of the start of construction.

Article 37. The Licensee shall operate the North Fork, Faraday and River Mill Developments in such a manner that stages no higher than natural flood peak stage occur downstream from the River Mill Development.

Article 38. The Commission reserves the right to determine at a later date what transmission facilities, if any, shall be included in this license as part of the project works, after notice and opportunity for hearing.

Article 39. Whenever the United States or the State of Oregon shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency or the State of Oregon to use, free of cost, such of Licensee's lands and interest in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition after notice and opportunity for hearing, the Licensee shall modify the project operation as may be prescribed by the Commission, reasonably consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States or the State of Oregon under the provisions of this article. This article shall not be interpreted to place any obligation on the United States or the State of Oregon to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 40. The Licensee shall construct, maintain and operate or shall arrange for the construction, maintenance and operation of such recreational facilities including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities and utilities, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal and State agencies after notice and opportunity for hearing and upon findings based upon substantial evidence that such facilities are necessary and desirable, and reasonably consistent with the primary purpose of the project.

Article 41. The Licensee shall commence construction of the Faraday dam prior to November 1, 1965, and shall in good faith and with due diligence complete such construction prior to November 1, 1967.

Article 42. The Licensee shall, within one year from the date of this license, file with the Commission for approval an Exhibit R conforming to Section 4.41 of Commission Regulations under the Federal Power Act. The plan shall be prepared after consultation with appropriate Federal, State and local agencies, and shall include recreational improvements which may be provided by others in addition to the improvements the Licensee plans to provide.

Article 43. The North Fork Evaluation Program shall be extended in time and scope to include studies of the existing fish passage facilities at River Mill, such studies to be conducted cooperatively among the Licensee, Fish Commission of Oregon, Oregon State Game Commission, and the U.S. Fish and Wildlife Service for the purpose of determining future action on fish passage facilities at River Mill: *Provided* that, in the event the Licensee and the agencies named herein fail to reach an agreement on a definite study plan, the Commission reserves the right to determine the same after notice and opportunity for hearing.

Article 44. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and recreational purposes, including fishing and hunting, and shall allow to a reasonable extent for such purposes the construction of access roads, wharves, landings, and other facilities on its lands the occupancy of which may in appropriate circumstances be subject to payment of rent to the Licensee in a reasonable amount: *Provided*, that the Licensee may reserve from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property and Provided further, that the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities. These facilities are in addition to the facilities that the Licensee may construct and maintain as required by the license.

Article 45. No lease of the project or any part thereof whereby the lessee is granted the occupancy, possession, or use of the project, or any part thereof, shall be made without prior written approval of the Commission; and the Commission may, if in its judgment the situation warrants, require that all the conditions of the license, of the Act, and of the rules and regulations of the Commission shall be applicable to such property so leased to the same extent as if the lessee were the Licensee: Provided, that the provisions of this article shall not apply to leases of land or buildings or other property while not required to achieve the purposes of the license.

Article 46. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall, after notice and opportunity for hearing, permit such reasonable use of its reservoirs or other project works or parts thereof as may be ordered by the Commission in the interest of comprehensive development of the waterway or waterways involved and the conservation and utilization of water resources of the region for water supply for steam-electric, irrigation, industrial, municipal or similar purposes, consistent with the primary objective of the project. The Licensee shall receive such reasonable compensation as may be appropriate for use of its reservoirs or other project works or parts thereof for such purposes, any such compensation to be fixed either by Commission approval of an agreement between the Licensee and the party or parties benefiting or by the Commission in the event the parties are unable to agree. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the application possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

(E) Articles 4, 17, and 22 of the license are hereby eliminated from the license.

(F) The exhibits designated as described in paragraph (A) above are hereby approved as part of the license for Project No. 2195, and the superseded exhibit described in finding (4) above is hereby eliminated from the license for the project.

(G) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgment of the acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

(H) This amendment in the manner set out above shall not operate to alter or amend the license in any other respect, and shall not in any way constitute a waiver of any other part, provision or condition of the license.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, PROJECT NO. 2481

ORDER GRANTING REHEARING FOR FURTHER CONSIDERATION

(Issued April 23, 1965)

On March 22, 1965, Public Service Company of New Hampshire (Applicant) filed an application for rehearing of the Commission's order issued February 24, 1965, 33 FPC 319, with respect to Applicant's Swans Falls Hydroelectric Plant located on the Saco River in the Town of Fryeburg, Maine, Project No. 2481. The Applicant requests that the termination date of the license be changed from December 31, 1988 to March 1, 1966, and that Article 13 should be deleted. Applicant represents that because of the continued deterioration of the plant, it believes that the plant should be retired from service at the earliest practicable date.

The Commission finds:

It is appropriate and in the public interest in administering Part I of the Federal Power Act (16 U.S.C. 791–823), that the Public Service Company of New Hampshire's aforesaid application for rehearing of the Commission's order dated February 24, 1965, be granted for purposes of further consideration.

The Commission orders:

The aforesaid application filed by Public Service Company of New Hampshire for rehearing of the Commission's order dated February 24, 1965 is hereby granted for the purposes of further consideration.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

AMERADA PETROLEUM CORPORATION[1] DOCKET NOS. G–16117, G–16118, G–16119, G–16256, G–19488, G–19489, G–19490 AND G–19577; SHELL OIL COMPANY, G–12951, G–12952, G–12953, G–16253, G–16254, G–16255 AND G–17368; SOCONY MOBIL OIL COMPANY, INC., G–12981, G–12982, G–13030, G–13311, G–15448, G–15449 AND G–15995; THE ATLANTIC REFINING COMPANY, G–18565 AND G–18913; THE SUPERIOR OIL COMPANY, G–12949, G–15358 AND G–12950

ORDER TO SHOW CAUSE, GRANTING STAY OF COMPLIANCE WITH LETTER ORDERS, NOTICE OF AND SETTING PROCEDURES FOR HEARING, AND CONSOLIDATING PROCEEDINGS

(Issued April 26, 1965)

By order issued April 3, 1964 in *Phillips Petroleum Company*, Docket Nos. G–11217, G–14115, G–18417, G–18481, *et al.*, 31 FPC 774, the Commission accepted for filing decreased rate proposals of Phillips Petroleum Company (Phillips) which reflected for the locked-in periods involved the rate levels Phillips is currently contractually entitled to retain under the spiral escalation and favored-nation[2] provisions of its contracts with its purchaser, El Paso Natural Gas Company (El Paso). Phillips' spiral escalation rate increases in such proceedings were based on El Paso's rate increases in Docket Nos. G–4769, G–12948 and G–17929. By order issued December 4, 1963, 30 FPC 1400, reduced settlement rates were approved for El Paso in the aforementioned dockets. Phillips' proposed decreased rates thus reflected the present contractual effect on its rates of the El Paso settlement.

---

[1] This order also relates to the proceedings listed in the Appendix which were also involved in the February 26, 1965, letter-orders issued herein. Unlike the producers and proceedings listed in the caption, the producers did not seek rehearing in the proceedings listed in the Appendix.

The Commission by letter-orders issued February 26, 1965, apprised approximately forty-eight producers, whose favored-nation rate increases were based either directly or indirectly on Phillips' aforementioned spiral escalation rate increases, that Phillips had filed spiral rate decreases and had made refunds to El Paso therefor, and ordered said producers to file related decreased rate filings and to make appropriate refunds. Of the forty-eight producers, five have filed applications for rehearing pursuant to Section 19(a) of the Natural Gas Act (Act) and Section 1.34 of the Commission's Rules of Practice and Procedure, and three of these have petitioned for a stay of the provisions of the letter-orders issued to them on February 26, 1965.[3]

The producers in their applications for rehearing contend, *inter alia*, that: (1) the Commission erred in issuing the said letter-orders without notice or hearing; (2) the Commission erred in concluding that the decreased rate filings of Phillips served retroactively to deprive the producers of contractual consent to the favored-nation rate increases involved herein; (3) even if the Commission was legally empowered to issue said letter-orders, the Commission erred in failing to recognize that there were prices paid or payable by El Paso to producers other than those of Phillips during the whole or a portion of the "locked-in" periods involved here which afforded contractual consent to their increased rates; and (4) the Commission erred in attempting to dispose of the rate increases herein which are consolidated with the Permian Basin Area Rate Proceedings, Docket No. AR61–1, *et al.*

In the Permian area rate proceeding we will determine the justness and reasonableness of all of the producer rates in that area. Such a determination is apart from the contractual basis for any producer rate filings involved there. As we stated in the Shell opinion,[4] 29 FPC at 504:

> Any producer filing for an increase under a favored-nation clause of necessity has two hurdles to overcome in ultimately justifying the rate increase. First, his increase is dependent upon the validity of the rate which triggered his favored-nation clause. If the triggering rate is later found to be invalid or unreasonable in whole or in part, then any rate filing based on such triggering is without contractual justification to the extent the triggering rate is reduced. After establishing what rate is valid under the contract clause for the favored-nation increase, it must also be shown that such rate is just and reasonable. In sum, the validity of the filing is at all time subject to the ultimate determination of the validity of the triggering rate as well as the justness and reasonableness of the increased rate.

---

[2] As noted in the footnote at 31 FPC 774, the favored-nation rates of Phillips are based on favored-nation rates of other producers which were allegedly triggered by the Phillips' spiral escalation rates.

[3] Applications for rehearing were timely filed in the above-captioned proceedings by Amerada Petroleum Corporation (Amerada) on March 24, 1965, by The Superior Oil Company (Superior) on March 26, 1965, by The Atlantic Refining Company (Atlantic) on March 26, 1965, by Shell Oil Company (Shell) on March 29, 1965, and by Socony Mobil Oil Company, Inc. (Socony) on March 29, 1965. Concurrent motions for a stay were filed by Amerada, Shell and Socony.

[4] Shell Oil Company, *et al.*, Opinion No. 382, 29 FPC 498.

Accordingly, even if these favored-nation increases are determined to be just and reasonable in the Permian case, the contractual basis for these filings would remain in dispute. Under these circumstances there is no justification for postponing action on these contractual matters until the Permian decision has become final.

At the time of issuance of the letter-orders here complained of, there did not appear to be any factual questions involved in the disposition of these contractual matters since all of the favored-nation filings at the time of filing were based either directly or indirectly on Phillips' spiral escalation increases. In the light of the reduced spiral escalation rates filed by Phillips because of the El Paso settlement, which were accepted by the Commission in its order of April 3, 1964, it seemed clear that there was no contractual support for the favored-nation filings in these cases. Consistent with our decision in the Shell case[5] where we held that favored-nation increases lack contractual support when based on a claimed triggering rate which is later determined to be without contractual justification, we also held in our February 26 orders that there was no contractual basis for these favored-nation filings.

However, some of the producers in their applications for rehearing have raised factual questions concerning the possibility that their favored-nation increases might have been triggered by producer prices other than Phillips' spiral increases. Questions have also been raised with respect to the level of the rate reduction and the period to be covered thereby in light of the contractual right of certain of these producers to file for periodic escalation increases or renegotiated increases during the period covered by these proceedings. In view of the alleged factual problems presented, we think it appropriate to set these contractual matters for hearing and shall stay the requirements of the letter-orders issued February 26 in the above captioned proceedings. We shall provide for a prehearing conference at which the substantive matters to be resolved by formal hearing will be set forth and all matters that can be resolved without formal trial will be eliminated from hearing and settled by stipulation. Thereafter, the Presiding Examiner shall establish the date of hearing and shall prescribe such other procedures as he may deem appropriate in the disposition of these matters.

Because of the alleged factual problems discussed above in connection with the producers' applications for rehearing, we conclude that it would also be appropriate to defer action in those proceedings listed in the Appendix (where the producers did not file applications for rehearing of the February 26, 1965, orders) until a decision has been reached with respect to the proceedings listed in the caption which have been set for hearing. We shall therefore stay the requirements of the February 26, 1965, orders in the proceedings listed in the Appendix until further order of this Commission. In the event any producer involved in the proceedings listed in the appendix desires to comply with the February 26, 1965, orders despite our stay here, in the absence of objection by any interested party, it may do so by filing rate reductions and making refunds in the same manner that Phillips' did in Docket No. G–12117, *et al.* as provided in the February 26, 1965, orders.

The Commission orders:

(A) At the hearing provided for below, Amerada, Shell, Socony, Atlantic, and Superior shall show cause, if there be any, as to why they should not be required to comply with the requirements of the letter-orders issued February 26, 1965, in the above-captioned proceedings.

---

[5] Opinion Nos. 382 and 382–A, affirmed *Shell Oil Company, et al.* v. *F.P.C.*, 334 F. 2d 1003 (CA3–1964); *cf.* order issued July 24, 1963, in *Texaco Inc., et al.*, Docket No. G–17613, *et al.*, 30 FPC 402.

(B) Pursuant to the authority of the Natural Gas Act, particularly Sections 4, 15 and 16 thereof, the Commission's Rules of Practice and Procedure and the Regulations under the Natural Gas Act (18 CFR, Chapter I), the above-captioned proceedings are hereby consolidated for the purpose of hearing and a public hearing shall be held pursuant to the procedures prescribed herein.

(C) Presiding Examiner, Harry W. Frazee, or any other officer or officers of the Commission designated by the Chief Hearing Examiner for that purpose, shall preside at the prehearing conference and the hearing in the above-captioned proceedings pursuant to the Commission's Rules of Practice and Procedure, and as further provided by this order.

(D) Pursuant to the provisions of Section 1.18 of the Commission's Rules of Practice and Procedure, a prehearing conference before the Presiding Examiner herein designated shall commence at 10:00 A.M. (EDST) on June 2, 1965, in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C. for the purpose of effectuating the intent of the Commission as set forth in the body of this order.

(E) After the prehearing conference, the Presiding Examiner shall give notice of the date of hearing and shall prescribe such other procedures as he deems appropriate in the disposition of these matters.

(F) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the Rules of Practice and Procedure [18 CFR 1.8 and 1.37 (f)] on or before May 20, 1965. Answers to petitions to intervene may be filed within 10 days after the date of service of the petition, but in no event later than May 27, 1965.

(G) The requirements of the letter-orders issued on February 26, 1965, in the above-captioned proceedings and in the proceedings listed in the Appendix are hereby stayed until further order of the Commission.

APPENDIX

Respondent	*Docket No.*
Austral Oil Co., Inc	G–19540
Bakke, W. E	G–16477
Benedum Trees Oil Co	G–12881
British-American Oil Prod. Co	G–19254
Cabot Corporation (SW)	G–18842
F. A. Callery	G–19645
Charm Oil Co	G–19491
Continental Oil Company	G–19728
L. R. French, Jr	G–17347
Getty Oil Co	G–16533, RI60–72
Gulf Oil Corp	G–13100
Jake L. Hamon	G–18327
Herd Oil & Gas Co	G–18769
Humble Oil & Refining Company	G–16415
Humble Oil & Refining Company	G–16416, G–19487, G–18172, G–17799, G–18568
H. L. Hunt	G–16421
Lamar Hunt	G–17424, G–16418
Hunt Industries	G–16423
N. B. Hunt	G–16478, G–16420
Hunt Oil Company	G–16479, G–16422, G–18668
W. H. Hunt	G–17425, G–16419
Inland Natural Gasoline	G–19992
McFarlin, E. B. & Ketchum, E. P	G–13161
Northwest Prod. Corp	G–16417
The Nueces Company (Op)	G–17165
Pan American Petroleum Corp	G–19998, G–16480, G–20006, G–16532, G–16481, G–20007, G–20008, G–20452, G–16425
The Pure Oil Co	G–17937, G–16800
Redfern Oil Co	G–18770
Robertson, French M., *et al*	G–16535
Sohio Petroleum Company, (Operator), *et al*	G–16477

Respondent	*Docket No.*
Secure Trust	G–16424
Sinclair Oil & Gas Co.	G–14060, G–16534, G–19723, G–18326
Cabot Corporation (SW) and Sinclair Oil & Gas Co.	G–18844, G–16537
Southern Union Prod. Co.	G–19483
Southland Royalty Co.	G–19727
Standard Oil Co. of Texas, a Division of California Oil Company	G–13187, G–19664, G–19583, RI60–337, G–14059, G–19583, RI60–164
Sun Oil Company	G–12841, G–16257, G–12880, G–16258
Sunray DX Oil Company	G–19090, G–13160, G–16884.
Tenneco Oil Company	G–19728
Texaco Inc.	G–13155, G–17159, G–13162, G–16536, RI60–137, G–13190, G–16414, G–14062, G–16413, RI60–132, RI60–142.
Tidewater Oil Co.	G–14185, G–16259, RI60–71, G–14061, RI60–70, G–16260.
Union Texas Petroleum, a Division of Allied Chemical Corporation	G–16889, G–18951, G–16888, G–18952
Warren Petroleum Corp.	G–12842, G–16114, G–18560, G–15304, G–18951, G–16888, G–18952. G–18467, G–15311.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

ARKANSAS LOUISIANA GAS COMPANY, DOCKET NO. CP65–234

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 26, 1965)

On February 5, 1965, Arkansas Louisiana Gas Company (Applicant) filed in Docket No. CP65–234, an application and a supplement thereto on February 23, 1965, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing (1) the construction and operation of (a) approximately 23.4 miles of 14-inch pipeline to replace existing 10-inch pipeline on Line AM–46, and (b) approximately 19.3 miles of 10-inch pipeline to replace existing 8-inch pipeline on Line AM–151, and (2) the reconditioning and upgrading of approximately 15.1 miles of 12-inch Line E to provide for a maximum operating pressure of approximately 500 psig, all as more fully set forth in the application.

Applicant proposes to increase maximum daily interruptible deliveries to the Arkansas Cement Corporation (Arkansas Cement) from 13,500 Mcf to 22,500 Mcf daily. Estimated annual sales will increase to approximately 6,750,000 Mcf in 1967 from 3,783,000 Mcf in 1964. Deliveries to Arkansas Cement are being made under authorizations issued in Docket Nos. G–13328 and CP61–193, issued February 11, 1958, 19 FPC 224, and May 26, 1961, 25 FPC 1045, respectively.

The estimated cost of new construction is $1,678,900 with a net salvage of $221,100, resulting in a net construction cost of $1,457,800 which will be defrayed from current funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 21, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplement and exhibits submitted in support of the authorization, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Arkansas Louisiana Gas Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued January 26, 1943, in Docket No. G-252 (3 FPC 910).

(2) The proposed construction and operation of facilities and transportation and delivery of natural gas as hereinbefore described, and as more fully described in the application, supplement and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities, transportation and delivery are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to the Applicant in this proceeding, authorizing the construction and operation of facilities and transportation and delivery of up to 22,500 Mcf daily of natural gas as more fully described in the application, supplement and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and transportation of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date on which this order issues.

(D) The certificate issued hereby is granted on the express condition that (1) the facilities authorized hereby shall not be used to transport more than 22,500 Mcf daily of interruptible gas to the Arkansas Cement Corporation and (2) the interruptible service authorized herein shall be subject to any curtailment or interruption required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., PROJECT NO. 2338

ORDER PERMITTING INTERVENTION

(Issued April 26, 1965)

On April 9, 1965, the Cortlandt Citizens for the Hudson River (Cortlandt Citizens), a group of persons who reside in the general area of one of the alternative routes of the overhead transmission lines proposed to be included in the license for the Cornwall Pumped Storage Project, filed a petition to intervene.

Consolidated Edison has filed an answer urging that the petition be denied because the sole indicated basis for Cortlandt's request is its wish to establish the undesirability of overhead transmission lines and to propose alternatives, issues which are outside the scope of the forthcoming hearing. Cortlandt's petition alleges, however, that these issues constitute its "primary" interest in the proceeding, and we note that a citizens' group in that locality obviously has an interest in the routing of the overhead transmission lines. We therefore deem it appropriate to afford Cortlandt an opportunity to introduce evidence with respect to a proposed route to be followed by the project transmission facilities and the necessary width of the right-of-way. Therefore we are limiting the participation of Cortlandt to the issue of the best route for the overhead transmission lines between Nelsonville, N.Y. and the Company's transmission line grid.

The Commission finds:

The participation of the above-named petitioner in this proceeding may be in the public interest.

The Commission orders:

The Cortlandt Citizens for the Hudson River is hereby permitted to intervene in the above-entitled proceeding subject to the rules and regulations of the Commission: *Provided*, that the participation of such intervener shall be limited to the issue of the best route for the overhead transmission lines to be included in the license issued for the Cornwall Pumped Storage Project; *Provided, further*, That the admission of the Petitioner shall not be construed as recognition by the Commission that the intervener might be aggrieved because of any order or orders of the Commission entered in this proceeding.

Commissioner Ross *dissents* to the limitation of Cortland's participation to the issue of overhead transmission lines. For the reasons stated in his dissent to Opinion No. 452, 33 FPC 428 at 458, he would have permitted evidence respecting underground transmission lines.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

SOUTHWESTERN PUBLIC SERVICE COMPANY, DOCKET NO. E-7038

ORDER ON REHEARING

(Issued April 26, 1965)

On March 30, 1965 and April 1, 1965, Southwestern Public Service Company (Southwestern) and Community Public Service Company (Community), respectively, filed applications for rehearing of the Commission's Opinion No. 451 and accompanying order, 33 FPC 343.

In its application, Community reiterates its position that the Commission should either adopt the findings and order of the examiner, or order Southwestern to extend the lower wholesale rate approved for the cooperatives to Community and the other investor-owned companies purchasing electric energy from Southwestern. Community advances no new facts or arguments which we have not previously considered. Its application presents no reasons for granting rehearing or disturbing our original opinion and order and will therefore be denied.

Southwestern does not except to those portions of our opinion and order that deal with rate of return, the rate base, or the cost of service allowed Southwestern on its sales to its three investor-owned distribution customers. In addition, Southwestern does not object to the required overall reduction in revenues applicable to its investor-owned customers, ($552,376.00) or to the demand and energy rates which the Commission applied to Lea County Electric Cooperative. Southwestern's exceptions are limited to the design of the rates for the three investor-owned customers and certain features of the rate schedules prescribed for Lea County.

In its application, Southwestern requests that the Commission stay the effectiveness of the rates prescribed by our order (which Southwestern filed under protest) and substitute rate schedules which it proposes in its application for rehearing, or such other schedules as the Commission shall find will be more equitable and better serve the public interest. The rates which Southwestern proposes were not considered at the hearing or at any previous stage of this proceeding. Before taking final action, we consider it appropriate to give the customers which would be affected by the changes Southwestern suggests, an opportunity to comment thereon.

In view of the fact that Southwestern has not taken exception to the overall level of rates in our original order, we will not stay the effectiveness of our order in this respect. Thus, Southwestern may continue to charge its existing rates until such time as the Commission finally determines the rate schedules which Southwestern may apply to its three investor-owned customers and Lea County. However, such rates will have a retroactive effective date of April 2, 1965, the effective date of the rate level prescribed in our original order.

Southwestern's alternative proposal which it would apply to Lea County would result in a rate increase for that customer which is neither justified by the record in this case nor consistent with the requirements of the Act and our Rules and Regulations. We therefore will not consider this alternative proposal as a possible substitute for the rate schedule ordered by paragraph (C) of Opinion No. 451. However, our consideration of this matter in the light of the Southwestern application for rehearing leads us to believe that two modifications in the rate schedule we ordered Southwestern to file for Lea County may be appropriate. These are retention of the demand ratchet provision now applicable to the Denver delivery point (F.P.C. Electric Rate Schedule No. 35) and the prescription of a rate schedule for the Plains delivery point similar to that applicable to the Denver point of delivery. We shall accordingly grant rehearing as to this part of the proceeding to give both Lea County and Southwestern an opportunity to express their views on this issue.

The Commission orders:

(A) The application for rehearing filed by Community Public Service Company is denied.

(B) The application for rehearing filed by Southwestern Public Service Company is denied in so far as it proposes a rate increase for Lea County Electric Cooperative.

(C) Rehearing of Opinion No. 451 and of the accompanying order is granted for the purpose of considering whether Southwestern's proposed rate schedule for its investor-owned customers is an appropriate and equitable method of bringing the rates of such customers down to the level prescribed in Opinion No. 451 and whether the rate schedule prescribed in Opinion No. 451 for Southwestern's sales to Lea County should be modified as described above.

(D) Community Public Service Company, New Mexico Electric Service Company, Cochran Power and Lighting Company, Lea County Electric Cooperative and any other party to this proceeding may file comments on the rate schedules proposed by Southwestern and Southwestern may file comments on the suggested revisions in the Lea County rate schedule within 30 days of the date of this order.

(E) Southwestern's request that the Commission stay paragraphs (B) and (C) of its original order of March 2, 1965 insofar as those paragraphs prescribe April 2, 1965 as the effective date of the rate schedules to be adopted to achieve the rate levels found therein to be just and reasonable for Southwestern's sales to its three investor-owned customers is denied.

(F) Southwestern shall serve a copy of its application for rehearing upon New Mexico Electric Service Company and Cochran Power and Lighting Company upon receipt of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

UNION OIL COMPANY OF CALIFORNIA, DOCKET NOS. G-16602, G-17673, G-17682, G-17705, G-19609, G-20287, RI61-80, RI62-43, RI63-117, AND RI64-238

ORDER RELEASING REFUNDS

(Issued April 27, 1965)

The Commission by order issued November 18, 1964,[1] approved Union Oil's offer of settlement of certain of its pending rate proceedings and ordered the company to retain the refunds to its pipeline customers pending our further order. This retention was directed in keeping with our policy expressed in the order approving the Humble settlement [2] wherein we stated that it is "our duty to insure that the ultimate consumers of gas actually receive all of the benefits of our rate regulation to which they may be entitled," and that we were taking action "to assure that, within the limits of our jurisdictional reach, the refunds to be ordered actually flow to those parties legally and equitably entitled thereto."

Review of the flow-through obligations of Union Oil's pipeline customers (Tennessee Gas Transmission Company, United Fuel Gas Company, Texas Gas Transmission Corporation and Trunkline Gas Company) shows that each of these pipelines is obligated to flow-through, except for insignificant amounts, the jurisdictional portion of any refund it will receive as a result of this settlement. All pipelines in the resale chain between Union Oil's customers and the ultimate consumer which receive significant amounts are similarly obligated with the exception of Texas Eastern Transmission Corporation. Texas Eastern is obligated to flow-through the amounts it receives from its supplier, Texas Gas, which are attributable to purchases prior to May 6, 1961, but claims that it has no such obligation for subsequent periods. Accordingly we have provided that Texas Gas shall retain and defer its flow-through to Texas Eastern of the amounts which are attributable to purchases by Texas Eastern subsequent to May 5, 1961.

---

[1] Order Conditionally Approving Offer of Settlement, Severing and Terminating Proceedings, and Prescribing Refunds," *Union Oil Company of California*, Docket No. G-16602, *et al.*, 32 FPC 1336.

[2] "Order Conditionally Approving Rate Settlement Proposal, Severing and Terminating Proceedings, and Prescribing Refunds," *Humble Oil & Refining Company*, Docket No. G-9287, *et al.*, issued July 8, 1964, 32 FPC 49.

The Commission orders:

(A) Union Oil shall release and pay over to Tennessee Gas Transmission Company, United Fuel Gas Company, Texas Gas Transmission Corporation and Trunkline Gas Company within 30 days of this order, the total amounts assigned to each as specified in Union Oil's refund report filed with the Commission on December 30, 1964 as ordered in Paragraph (E) of the Commission's order of November 18, 1964, together with interest at six percent per annum from November 18, 1964 to the date of this order.

(B) Texas Gas Transmission Corporation shall, pending further order of the Commission, retain and defer the flow-through of that portion of the amounts received pursuant to Paragraph (A) which is attributable to purchases by Texas Eastern Transmission Corporation subsequent to May 5, 1961.

(C) The amounts ordered to be retained pursuant to Paragraph (B) at the option of Texas Gas, may be:

1. Commingled with its general assets but interest at 6% per annum shall be paid from the date the funds would flow-through, if not so retained, to the date on which they are paid to the person ultimately determined to be entitled thereto in a final order of the Commission,

2. Deposited in savings accounts in any bank or savings and loan association where deposits are insured by the Federal Deposit Insurance Corporation, with all interest earned thereon to be credited to the savings accounts. Each savings account shall not exceed $10,000, or

3. Deposited in a special escrow account on or before the date the funds would flow-through, if not so retained. If the fund is deposited in such an escrow account, the following conditions must be met:

(a) Texas Gas shall submit 45 days prior to the date the funds are to be deposited, an executed escrow agreement conditioned as set out below with a certificate showing service on the party to whom the fund would otherwise be payable. Unless notified to the contrary by the Secretary within 30 days from the date of filing thereof, the Escrow Agreement shall be deemed to be satisfactory and to have been accepted for filing. The Escrow Agreement shall be entered into between Texas Gas and any bank or trust company used as a depository for funds of the United States Government and the agreement shall be conditioned as follows:

(b) Texas Gas, the bank or trust company, and the successors and assigns of each, shall be held and formally bound unto the Federal Power Commission for the use and benefit of those entitled thereto, with respect to all amounts and the interest thereon deposited in a special escrow account, subject to such Agreement, and such bank or trust company shall be bound to pay over to such person or persons as may be identified and designated by final order of the Commission and in such manner as may be therein specified, all or any portion of such deposits and the interest thereon.

(c) The bank or trust company may invest and reinvest such deposits in any short-term indebtedness of the United States or any agency thereof or in any form of obligation guaranteed by the United States which is, respectively, payable within 120 days as the said bank or trust company in the exercise of its sound discretion may select.

(d) Such bank or trust company shall be liable only for such interest as the invested funds described in Subparagraph (c) above will earn and no other interest may be collected from it.

(e) Such bank or trust company shall be entitled to such compensation as is fair, reasonable and customary for its services as such, which compensation shall be paid out of the escrow account to such bank or trust company. Said bank or trust company shall likewise be entitled to reimbursement for its reasonable expenses necessarily incurred in the administration of this escrow account, which reimbursement shall be made out of the escrow account.

(f) Such bank or trust company shall report to the Secretary quarterly, certifying the amount deposited in the trust account for the quarterly period.

(D) Except as specifically ordered to retain amounts and defer the flow-through to specified parties, each company shall flow-through the refunds received pursuant to this order and submit a report thereon in accordance with the applicable Commission orders governing its flow-through obligation.

(E) Within 45 days of this order, Union Oil shall file with the Commission releases from its customers for the amounts paid to them pursuant to Paragraph (A).

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

VIRGINIA ELECTRIC & POWER COMPANY, PROJECT NO. 2462

ORDER ISSUING LICENSE (MAJOR)

(Issued April 27, 1965)*

Application was filed on April 20, 1964, by Virginia Electric & Power Company (Applicant) of Richmond, Virginia, for a license under Section 4(e) of the Federal Power Act (Act) for constructed Project No. 2462, known as the Belle Isle Project, located on the James River, a navigable water of the United States,[1] within the City of Richmond, Virginia. The project does not affect lands of the United States.

The project dam was constructed in 1904, the powerhouse and the three 1,650 horsepower waterwheels were installed in 1914, and two 1,000 KW generators were installed in 1923. Applicant purchased the project in 1926 and installed a third 800 KW generator unit in 1934. No substantial change in the project has been made thereafter.

The Secretary of the Army and the Chief of Engineers have advised that the plans of the project structures affecting navigation are satisfactory insofar as the interests of navigation are concerned and that the project plans have been approved pursuant to Section 4(e) of the Act. The Corps of Engineers pointed out that the Belle Isle Project had been proposed for redevelopment in the Corps' comprehensive plan for development of the James River Basin[2] which proposed the construction sometime in the future of a 60 foot high dam, the excavation of a tailrace, and the installation of 24,000 kw of generating capacity. In view of the latter proposal, the Corps recommended for inclusion in any license for the subject project a condition to protect the authorized functions of any future development in the James River Basin under the Corps' jurisdiction. The Corps also recommended for inclusion in any license for the project the terms and conditions in the interest of navigation contained in Form L-3 (Revised August 1, 1964) (32 FPC 1114), which is incorporated herein and made a part hereof.

---

*See order on rehearing issued June 23, 1965, terminating order issuing license, 33 FPC 1286.

[1] In our order issued August 12, 1964, Appalachian Power Company, Project No. 2376, 32 FPC 591, we found that the James River from its mouth at Newport News at least to its confluence with Jackson's River at river mile 340 is a navigable waterway of the United States. Project No. 2462 is located in this navigable reach of the river.

[2] House Document No. 207, 80th Cong., 1st Sess., 1945.

The Department of the Interior, in reporting on the application, referred to the aforementioned 1945 Corps of Engineers' comprehensive plan for development of the James River Basin and to the relation of the subject project to such plan. The Department's report expressed concern that the increasing electric power demands in the State of Virginia will foster the early reconsideration and adoption of the Corps' plan, and suggested that the Commission consider such possible future development of the James River Basin in imposing license terms for the Belle Isle Project No. 2462. The Department's report recommended finally that the terms and conditions in the interests of fish and wildlife contained in the aforesaid Form L-3 be included in any license for the project.

The Department of Health, Education, and Welfare has advised that the Belle Isle Project has had no known adverse effects on water quality in the past, and none are expected.

The Department of Conservation, Commonwealth of Virginia, has advised that the project has no significant recreational potential and a recreational use plan for the project is not justified.

The only known recreational value and use of this section of the James River at this time is sport angling, but pollution limits this activity in late summer months. Through Articles 17 and 33 we are providing for needed development of access for fishermen. We are also requiring in Article 33 that the licensee cooperate with local agencies and organizations in the development of other recreational facilities in connection with the use of project lands and waters by the public and to keep us advised at stated intervals with respect to the results.

For the reasons set forth in our April 25, 1962 Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of April 1, 1962 and a termination date of December 31, 1993.

The Commission finds:

(1) The project affects navigable waters of the United States.

(2) Applicant is a corporation organized under the laws of the Commonwealth of Virginia, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public use, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative

annual charge is 3,700 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable.

(7) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

(A) This license is hereby issued to Virginia Electric & Power Company (Licensee) of Richmond, Virginia, under Section 4(e) of the Federal Power Act (Act) for a period effective as of April 1, 1962, and terminating December 31, 1993, for the continued operation and maintenance of Belle Isle Project No. 2462, located on the James River, a navigable water of the United States, subject to the terms and conditions of the Act, which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2462 consists of:

(i) All lands constituting the project area and enclosed by the project boundary or limits which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interests therein are owned or held by the Licensee or by the United States; such project area and project boundary being more specifically shown and described by Exhibit J of the application for license which is designated as follows:

Exhibit J: (FPC No. 2462-1) "General Property Map"

(ii) All project works described as follows: (1) an 1,870 foot long concrete diversion dam; (2) a headrace bound by Belle Isle, on the north, and a 470 foot long masonry and concrete dam joined to a 74 foot long concrete dam; (3) a powerhouse containing two identical horizontal shaft units rated at 1,000 kw each and one 800 KW unit, for a total output of 2,800 KW; (4) a substation including a 4 kv bus and a 13.2 kv bus; (5) appurtenant electrical and mechanical facilities—the location and designation of which are more fully shown on the following exhibits:

Exhibit L: (FPC No. 2462-2) "General Arrangement—Plan and Sections"

Exhibit M: Two typewritten pages entitled, "General Description of Equipment," filed with the Commission on April 20, 1964, and supplemented October 14, 1964.

(iii) All of the structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-3 (Revised August 1, 1964), entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States" (32 FPC 1114), which terms and conditions, designated as Articles 1 through 29, are attached hereto and made a part hereof except for Article 25 thereof; and subject to the following special conditions set forth herein as additional articles:

Article 30. The Licensee shall pay to the United States the following annual charge, effective April 1, 1962:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. The authorized installed capacity for such purpose is 3,700 horsepower.

Article 31. The right, power, and authority is reserved to the United States to construct or to the Commission to issue a license authorizing the construction, operation, and maintenance of a hydro-electric project which will more completely utilize the water resources of the reach of the James River in which the project is located.

Article 32. The acceptance of this license by the Licensee shall constitute its stipulation, consent and agreement, made upon its own behalf and upon the behalf of its successors and assigns for the benefit of the United States or the person or persons hereinafter constructing, operating and maintaining the more complete development or his or their successors and assigns, that said license shall be deemed surrendered at such time as Project No. 2462 becomes inoperative by reason of such more complete development, and that said Licensee, its successors or assigns shall not be entitled to any compensation for damages sustained by reason of such more complete development, other than (1) the right to receive from the owner of said more complete development for the unexpired term of the license for Project No. 2462 an annual amount of electric capacity and energy equal to the average annual amount generated by the project during the last five full years preceding commencement of construction of said more complete development upon payment to the owner of the more complete development of an annual amount equal to the average annual cost to the Licensee of producing the capacity and energy at Project No. 2462 during the last five full years preceding commencement of construction of said more complete development; or (2) in the event the owner of the more complete development is unwilling or unable to provide Licensee with the said amount of capacity or energy, the right to receive the difference, if any, between the annual cost of providing the lost capacity and energy from Project No. 2462 and the lowest reasonable cost of securing equivalent capacity and energy from an alternate source. If the Licensee for Project No. 2462 and the owner of such more complete development are unable to agree, the amount of capacity and energy lost to the Licensee by reason of such more complete development and the annual cost of producing equivalent capacity and energy at Project No. 2462, or the lowest reasonable cost of securing equivalent capacity and energy from an alternate source shall, upon application of the owner of the more complete development, be determined by the Commission.

Article 33. Licensee shall cooperate with State and local agencies and individuals in the development and maintenance of fishing access areas and roads and such other facilities necessary for full recreational utilization by the public of project lands and adjacent waters, consistent with the terms of the license and the operation of the project. At the end of six (6) years from the date of issuance of this license and every sixth year thereafter, Licensee shall advise the Commission of the results of cooperation with State and local agencies and of further recreation development at the project.

Article 34. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall, after notice and opportunity for hearing, permit such reasonable use of its reservoirs or other project works or parts thereof as may be ordered by the Commission in the interest of comprehensive development of the waterway or waterways involved and the conservation and utilization of water resources of the region for water supply for steam electric, irrigation, industrial, municipal or similar purposes, consistent with the primary objective of the project. The Licensee shall receive such reasonable compensation as may be appropriate for use of its reservoirs or other projects works or parts thereof for such purposes, any such compensation to be fixed either by Commission approval of an agreement between the Licensee and the party or parties benefiting or by the Commission in the event the parties are unable to agree. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the application possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

VERMONT GAS SYSTEMS, INC., DOCKET NOS. CP65-141, CP65-142 AND CP65-155

ORDER AUTHORIZING IMPORTATION OF NATURAL GAS AND DISMISSING APPLICATION

(Issued April 28, 1965)

On November 17, 1964, Vermont Gas Systems, Inc. (Applicant) filed in Docket No. CP65-142 an application, as supplemented January 14, 1965, pursuant to Section 3 of the Natural Gas Act requesting an order of the Commission authorizing the importation of natural gas into the United States from the Dominion of Canada. On the same date, Applicant filed in Docket No. CP65-141 an application for an original permit pursuant to Executive Order No. 10485 authorizing the construction, operation, maintenance and connection of facilities at the International Boundary between the United States and Canada for the proposed importation.[1] Thereafter, on November 25, 1964, Applicant filed in Docket No. CP65-155 an application pursuant to Section 1(c) of the Natural Gas Act for exemption from the provisions thereof with respect to the construction and operation of facilities and the conduct of its natural gas operations within the State of Vermont. The above applications constitute a proposal by Applicant to import natural gas into the United States from Canada for resale and distribution in the State of Vermont, all as more fully set forth therein.

Applicant proposes to import up to 8,500 Mcf of natural gas per day into Vermont through the facilities covered by the permit concurrently issued in Docket No. CP65-141. Applicant also proposes to construct and operate 45 miles of 10-inch transmission line extending therefrom south to Burlington, Vermont. In addition, Applicant proposes to construct and operate the necessary distribution facilities to provide natural gas service, wholesale and retail, to potential customers along the proposed line, in the towns of St. Albans and Swanton, Franklin County, and the greater Burlington area, Chittenden County, all in Vermont.

Natural gas for the proposed service is to be purchased by Applicant from Trans-Canada Pipe Lines Limited (Trans-Canada). Total estimated volumes of gas involved to meet Applicant's annual and peak day requirements for the initial three year period of proposed operation are stated to be:

---

[1] An appropriate permit is to be issued concurrently with this order.

	First year	Second year	Third year
Annual (Mcf)	1,350,500	2,117,000	3,102,500
Peak day (Mcf)	3,700	5,800	8,500

Applicant's total estimated cost for the proposed project is $2,591,500, and will be financed by the sale of common stock to present stockholders in the amount of $625,000, and the sale of bonds in the amount of $2,500,000.

All necessary state and local authorizations have been received by Applicant.

On December 28, 1964, Falcon Seaboard Drilling Company (Falcon) filed a petition, as supplemented on January 4, 1965, to intervene herein. However, by order issued January 29, 1965, Falcon's petition was denied. Trans-Canada and the Public Service Board of the State of Vermont filed interventions in this proceeding on December 23, 1964, and December 28, 1964, respectively, in support of the authorization sought by Applicant.

After due notice, no other petition to intervene, notice of intervention or protest to the granting of the applications has been filed.

The Commission finds:

(1) Applicant, Vermont Gas Systems, Inc., a Vermont corporation having its principal place of business in South Burlington, Vermont, is a "person" within the meaning of Sections 2(1) and 3 of the Natural Gas Act, and the importation of natural gas proposed by it is subject to the jurisdiction of the Commission under the provisions of Section 3 of the Act.

(2) The importation of natural gas by Applicant, as proposed, is appropriate and consistent with the public interest, provided such importation be upon terms and conditions hereinafter specified, and authorization therefor should be granted as hereinafter ordered.

(3) The application for exemption from the provisions of the Natural Gas Act filed by Applicant in Docket No. CP65–155 is inappropriate and should be dismissed since Applicant is neither engaged nor legally authorized to engage in the transportation or sale of natural gas in interstate commerce, as contemplated by Section 1(c) of the Natural Gas Act.

(4) A permit for the construction, operation, maintenance and connection of facilities at the International Boundary between the United States and Canada for the importation of natural gas into the United States as hereinbefore described, should be issued pursuant to Executive Order No. 10485 in Docket No. CP65–141.

(5) Applicant should file a gas purchase contract with Trans-Canada and any subsequent revisions thereof with the Commission in accordance with Section 153.8 of the Regulations under the Natural Gas Act.

(6) Applicant should notify the Commission in writing upon receipt by Trans-Canada of appropriate authorization from the National Energy Board of Canada for the exportation of natural gas as proposed.

The Commission orders:

(A) Applicant, Vermont Gas Systems, Inc., be and the same is hereby authorized to import up to 8,500 Mcf of natural gas per day from Canada into the United States as hereinbefore described, as more fully described in the applications in this proceeding, upon the terms and conditions of this order.

(B) The authorization granted by paragraph (A) above shall not be transferable or assignable and shall remain in effect only so long as Applicant continues the acts and operations thereby authorized in accordance with the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder, and in accordance with the terms and conditions of this order.

(C) Applicant shall make, keep and preserve full and complete records with respect to the natural gas herein authorized to be imported, and shall file with the Commission annual reports showing, by months, the quantities of gas imported during the preceding calendar year, together with the volumes imported on the peak day of each month, and such other reports with respect to such importation as the Commission may deem necessary and in such form and manner as the Commission may prescribe.

(D) The authorization hereby granted may be modified from time to time or terminated, after opportunity for hearing, upon further order of the Commission, but in no event shall such authorization extend beyond the termination of the permit which is the subject matter in Docket No. CP65–141.

(E) The application for exemption from the provisions of the Natural Gas Act filed by Applicant pursuant to Section 1(c) of the Act in Docket No. CP65–155 be and the same is hereby dismissed.

(F) A permit for the construction, operation, maintenance and connection of facilities at the International Boundary between the United States and Canada for the importation of natural gas into the United States as hereinbefore described shall be issued pursuant to Executive Order No. 10485 in Docket No. CP65–141.

(G) Applicant shall file the gas purchase contract with Trans-Canada and any subsequent revisions thereof with the Commission in accordance with Section 153.8 of the Regulations under the Natural Gas Act.

(H) Applicant shall notify the Commission in writing upon receipt by Trans-Canada of appropriate authorization from the National Energy Board of Canada for the exportation of natural gas as proposed.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

THE JUPITER CORPORATION, DOCKET NO. RI63–212; TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP65–58

ORDER DENYING MOTION TO DISMISS PROCEEDINGS

(Issued April 29, 1965)

On March 10, 1965, The Jupiter Corporation filed a motion to dismiss the proceedings in Docket No. RI63–212 and in the alternative to consolidate those proceedings with an area rate proceeding instituted by the Commission with respect to independent producers of natural gas. On March 23, 1965 the Commission staff filed an answer requesting denial of Jupiter's motion.

In support of its motion to dismiss Jupiter contends that the Commission's investigation of Jupiter's rates on an individual company basis is incompatible with the Commission's regulation of independent producers on an area basis. Jupiter further contends that such regulation constitutes an unreasonable discrimination against it in violation of its constitutional rights and is unnecessary to protect the public interest. Jupiter's arguments are in large part the same as those which it made to support previous motions filed in these proceedings in which it sought various forms of relief. Specifically Jupiter cites arguments contained in its Alternative Motion to Sever and Stay Proceedings and in its Petition for Rehearing of our denial of Jupiter's motion to terminate.

In its answer, the staff contends that Jupiter's rates can be validly regulated only on a cost basis as the Commission has held that Jupiter is a transporter of gas in the Rollover Field, and that it produces no gas therein. Staff contends that the institution of producer area rate proceedings does not in any way preclude the Commission from regulating Jupiter's rates by an individual company cost of service method. Staff further states that the Commission has denied Jupiter other relief based on the same arguments contained in its motion to dismiss.

In our order issued February 12, 1965, 33 FPC 204, denying Jupiter's motion for continuance, we held that whether Jupiter seeks to present justification for its rates on a cost basis or any other basis is in the first instance a matter of its own selection and second, a question of admissibility to be ruled upon by the Presiding Examiner. We further held that the relevancy of Jupiter's contentions, now repeated in its motion to dismiss, with respect to the issue of "guideline," "in-line" and "area" prices, if any, to the investigation of Jupiter's rates in this proceeding may be appropriate matters which Jupiter would seek to introduce as part of its evidence or matters which they would brief after hearing.

In that order we also considered Jupiter's contention that the public interest will not be advanced by a reduction in its rates in this proceeding for sale and delivery to Tennessee Gas Transmission Company. For the reasons stated therein we held Jupiter's narrow construction of possible benefit to consumers to be without merit.

In our order issued January 18, 1965, 33 FPC 82, denying Jupiter's motion to terminate these proceedings, we held that Jupiter's motion to terminate would result in the Commission's summary disposal of these proceedings without consideration of the contentions advanced and evidenced proposed by the staff. Jupiter's instant motion to dismiss these proceedings would have a like result.

Nothing in Jupiter's present motion convinces us that any of these previous determinations were in error and nothing new has been raised which would otherwise justify dismissal of these proceedings or their consolidation with the area rate proceeding from which Jupiter was, without objection, previously severed.

We denied Jupiter's previously filed motions in these proceedings for the reason that the arguments made therein failed to support the relief requested. Upon consideration of those same arguments now advanced by Jupiter as grounds for its motion to dismiss Docket No. RI63-212, we are of the opinion that they fail to justify dismissal of these proceedings or Jupiter's request for alternative relief.

The Commission orders:

(A) The Motion to Dismiss Proceedings in Docket No. RI63-212, filed by The Jupiter Corporation on March 10, 1965, should be and hereby is denied.

(B) The alternative relief requested in Jupiter's motion to dismiss should be and hereby is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP65-87

ORDER CLARIFYING AND MODIFYING ORDER AUTHORIZING EXPORTATION OF NATURAL GAS

(Issued April 29, 1965)

On February 4, 1965, 33 FPC 180, the Commission issued its order in Docket No. CP65-87 authorizing Panhandle Eastern Pipe Line Company (Panhandle) to export natural gas from the United States to Canada in accordance with the contract, dated April 21, 1954, as amended, between Panhandle and Union Gas Company of Canada, Limited (Union Gas), as further amended by an agreement, dated December 20, 1963. On February 15, 1965, Union Gas filed a petition for clarification and modification of said order.

On page 181 of the order of February 4, 1965, appears the statement "The proposed and existing sales are interruptible or curtailable." Union Gas requests that such statement be clarified by adding the words "as set forth in the 1954 contract between Applicant and Union Gas as amended December 20, 1963, and in the order of the Commission in Docket No. G-612 issued on April 23, 1946, 5 FPC 472, as amended by order of the Commission issued on August 20, 1946, 5 FPC 718, and by order in Docket No. G-619 issued on April 23, 1946, 5 FPC 476." The Commission agrees that the proposed clarifying words should be added to its statement and, further, it appears to the Commission that the following clarifying statement should also be added:

> The 1954 contract as amended by letter agreement dated December 20, 1963, calls for curtailment and interruption at any time, but such curtailments or interruptions may not reduce the volumes deliverable by more than 15 per cent during the period from November 1 through March 31, inclusive, or by more than 8 per cent during the period from April 1 through October 31. Additionally, the cumulative deficiency on November 1 of any year may not exceed 10 per cent of the annual volume deliverable during the preceding year.

Union Gas also requests that paragraphs (i) and (E) of the order of February 4, 1965, should be modified by substituting certain proposed language of Union Gas in lieu of the present language of said paragraphs.

Paragraph (i) reads as follows:

> The export authorization hereinafter issued is granted on the express condition that the interruptible service authorized hereinafter shall be subject to any curtailment or interruption required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

Paragraph (E) reads as follows:

> This export authorization issued hereby is granted on the express condition that the interruptible service authorized herein shall be subject to any curtailment or interruption required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

Union Gas proposes the following substitute language for paragraphs (i) and (E):

> The authorization hereby granted may be modified from time to time or terminated, after opportunity for hearing, upon further order of the Commission but in no event should ("shall" for paragraph (E)) such authorization extend beyond termination of the Presidential Permit relating to this authorization.

The Commission believes that it would not be in the public interest to modify its order of February 4, 1965, to grant Union Gas' petition and to modify and clarify the order as proposed therein. For the past few months the Commission's orders granting authorization to render service to direct interruptible industrial customers have contained conditions similar to those in paragraphs (i) and (E).

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued February 4, 1965, in Docket No. CP65-87 be clarified and modified as hereinafter ordered.

The Commission orders:

The Commission's order issued February 4, 1965, in Docket No. CP65-87 be and the same is hereby clarified and modified as follows:

(A) The sentence "The proposed and existing sales are interruptible or curtailable." found on page 181 of the order of February 4, 1965 is hereby deleted and the following language is hereby substituted:

> The proposed and existing sales are interruptible or curtailable as set forth in the 1954 contract between Applicant and Union Gas as amended December 20, 1963, and in the order of the Commission in Docket No. G-612 issued on April 23, 1946, as amended by order of the Commission issued on August 20, 1946, and by order in Docket No. G-619 issued on April 23, 1946. The 1954 contract as amended by letter agreement dated December 20, 1963, calls for curtailment and interruption at any time, but such curtailments or interruptions may not reduce the volumes deliverable by more than 15 per cent during the period from November 1 through March 31, inclusive, or by more than 8 per cent during the period from April 1 through October 31. Additionally, the cumulative deficiency on November 1 of any year may not exceed 10 per cent of the annual volume deliverable during the preceding year.

(B) Paragraphs (i) and (E) of the order of February 4, 1965, are hereby deleted and the following language is hereby substituted:

> (i) The export authorization issued hereby is granted on the express condition that the service authorization herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers, subject to meeting the seasonal and annual minimum obligations of the April 21, 1954 contract, as amended, between the parties.
>
> (E) The export authorization issued hereby is granted on the express condition that the service authorization herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers, subject to meeting the seasonal and annual minimum obligations of the April 21, 1954 contract, as amended, between the parties.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

ALABAMA-TENNESSEE NATURAL GAS COMPANY, DOCKET NO. CP65-197

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued April 30, 1965)

On December 31, 1964, Alabama-Tennessee Natural Gas Company (Applicant), filed in Docket No. CP65-197 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act, as supplemented January 25, 1965, for permission and approval to abandon certain natural gas facilities and for a certificate of public convenience and necessity authorizing the construction and operation of other facilities, the sale of natural gas and initial service to the City of Moulton, Alabama, all as more fully set forth in the application on file with the Commission.

Applicant proposes to abandon, by sale to Decatur, Alabama, 4.8 miles of 3½-inch O.D. lateral pipeline, extending from a point of connection with the existing Decatur 6⅝-inch lateral line to a point north of Flint City, Alabama. In addition, Applicant seeks to abandon and remove 7.7 miles of 6⅝-inch main pipeline extending from a point near Madison, Alabama, to the terminus of Applicant's main transmission pipeline system near Huntsville, Alabama.

Applicant proposes further to construct and operate: (1) approximately 7.7 miles of 12¾-inch O.D. main transmission pipeline paralleling Applicant's existing 10¾-inch O.D. line from Madison, Alabama, to Huntsville, Alabama; (2) approximately 8.0 miles of 6⅝-inch O.D. lateral pipeline extending from Applicant's Hartselle Station in Morgan County, Alabama, to the delivery point for Muscle Shoals Natural Gas Corporation at Flint City, Alabama; and (3) an additional 350 BHP compressor unit at its Sheffield compressor station in Colbert County, Alabama.

The application states that the proposed construction is required to provide an additional 6,650 Mcf of daily system delivery capacity, in order to enable Applicant to serve its existing customers with their natural gas requirements for the winter heating season of 1965-66, and further to enable Applicant to provide initial service and to meet the estimated third-year peak day requirements of 1,225 Mcf for the City of Moulton, Alabama, a new customer of Applicant.

The estimated cost of Applicant's proposed construction is $665,000, and will be financed by short-term loans and the issuance of either bonds or debentures.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 29, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Alabama-Tennessee Natural Gas Company, a Delaware corporation having its principal place of business in Florence, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of July 11, 1948, in Docket No. G-585 (7 FPC 251).

(2) The facilities hereinbefore described, as more fully set forth in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, as well as to provide the initial service and

third-year peak day requirements of the City of Moulton, Alabama, which are subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sale of natural gas by Applicant by means of the proposed facilities are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(6) The facilities to be abandoned by sale to Decatur, Alabama, and by removal as heretofore described, are subject to the jurisdiction of the Commission and abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(7) Such abandonment by Applicant, as heretofore described, is permitted by the public convenience and necessity and an order approving same should be issued as hereinafter provided.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Alabama-Tennessee Natural Gas Company, to install and operate the proposed facilities and to sell natural gas as hereinbefore described, including the initial service and third-year peak day requirements of the City of Moulton, Alabama, all as more fully set forth in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in operation not later than six months from the date of this order, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations aforesaid.

(D) Permission for and approval of the abandonment by Applicant of the pipeline facilities hereinbefore described and as more fully described in the application, in this proceeding be and same are hereby granted.

(E) Applicant shall advise the Commission of the date of abandonment within 10 days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

COLUMBIA RIVER BASIN, HEADWATER BENEFITS DETERMINATION, DOCKET NO. E-6384

FINDINGS AND ORDER

(Issued April 30, 1965)*

This order determines payments to the United States under Section 10(f) of the Federal Power Act (16 U.S.C. 803 (f)) for benefits provided by its headwater improvements to certain non-Federal projects in the Columbia River basin between January 1, 1957, and August 31, 1961.

No headwater benefits accrued in the Columbia River basin before January 1, 1949.[1] The Commission has fixed payments to the United States for headwater benefits provided from January 1, 1949, through December 31, 1956;[2] from September 1, 1961, through August 31, 1963;[3] and from September 1, 1963, through August 31, 1964.[4] It also approved payments to licensees for headwater benefits provided to non-Federal projects by non-Federal reservoirs from September 1, 1961, through August 31, 1964.[5] With the investigation of benefits covered by this order, studies of headwater benefits in the Columbia River basin have now been made which embrace the entire period during which there was a possibility of such benefits. Henceforth, investigations will be made on a current basis. The staff completed its investigation covering the period of this order and submitted its report to all affected parties, both Federal and non-Federal, for comment by letter dated March 5, 1965.

Comments on the staff's report were filed jointly by The Montana Power Company, The Washington Water Power Company, Puget Sound Power & Light Company, PUD No. 1 of Chelan County, PUD No. 1 of Pend Oreille County, and PUD No. 2 of Grant County on April 2, 1965; by the Department of the Interior on April 7, 1965; and by the Corps of Engineers, Department of the Army, on April 9, 1965.

The non-Federal parties observed that the staff followed the same procedures in its report on headwater benefits during the period herein covered as it did in its report on the 1949–1956 period, except for raising the limit payment per kilowatt-hour from 0.49 mill to 0.55 mill, and they noted their acceptance of the procedures followed in that earlier report.

In addition, the non-Federal parties contend that the value of uncoordinated releases is substantially less than the value of coordinated releases and is 0.25 mill, or less, per kilowatt-hour. They state, however, that in recognition of the fact that the staff employed the same criteria in its study of the later period as it did in its study of the earlier period, except for the limit on the charge per kilowatt-hour, and that in recognition of the importance of settling past controversies so that concentration may be given to more important future problems, they agree to make the payments to the United States proposed in the staff's report, provided the determination is made by the Commission on that basis.

---

*See orders issued June 22, 1965 [unreported] and June 25, 1965 granting rehearing and stay, 33 FPC 1290; order issued November 2, 1965 dismissing party on rehearing, 34 FPC 1217.

[1] 11FPC 832 (1952).

[2] 31 FPC 1044 (1964).

[3] 29 FPC 238 (1963).

[4] Order of February 19, 1965 (33 FPC 300).

[5] 29 FPC 238 (1963); and order of February 19, 1965 (33 FPC 300).

The Department of the Interior, in its comments, recommends payments to the United States for headwater benefits in the period covered herein of $2,365,000 plus $416,000 for interest charges to January 1, 1965, on past due payments a total of $2,781,000. This figure stems from Interior's contention that, during the period studied, beneficiaries had assured generating capabilities based upon the full release of Federal storage. On this premise, it asserts that payments should be based on the formula in Section 11.27(a) of the Commission's Regulations under the Federal Power Act, using energy gains which would be obtained from the release of storage during an assumed repetition of the critical period.

The staff investigation shows that downstream parties were required to purchase electric energy from the Bonneville Power Administration because stored water was not released from Federal reservoirs. Interior in its computations of proposed payments for headwater benefits has attempted, however, to compensate for the fact that useable storage was not released for use of downstream parties. First, it computed a payment of $3,711,000 for headwater benefits on the basis of total assured storage releases. It then offset this amount by $1,346,000 for energy that the downstream parties would have been able to generate if the stored water in the Federal reservoirs had been released to meet needs of the downstream non-Federal parties. Thus, in fact, the downstream parties did not have assurance of scheduled storage releases from the Federal reservoirs, as contemplated under Section 11.27(a), since these parties were required to purchase energy from Bonneville Power Administration that could have been generated in their own plants if stored water had been released from Federal reservoirs.

The Department of the Interior further objects to our application of a limit of 0.55 mill per kilowatt-hour to the apportionment of Section 10(f) costs to storage. It contends that such a limit, accepted by parties to the coordination agreement as applicable to critical period energy, is inapplicable to actual energy generation. In support of its position, Interior illustrates the case of Grand Coulee during 1959, when out of the annual dam and reservoir costs the staff assigned only $7,500 or about 0.14 percent, to downstream projects. The significance of this particular example is not apparent since the computed unit apportionment of costs to storage for Grand Coulee was less than 0.55 mill per kilowatt-hour for all years of study. In any event, the use of the ceiling did not affect payments computed for Grand Coulee storage. The limit of 0.55 mill per kilowatt-hour is adopted herein since it is the limit most recently specified in Section 13(b) of the September 15, 1964 *Pacific Northwest Coordination Agreement* between all parties involved in this investigation.

The Department of the Army notes that the staff's proposed determination of payments for headwater benefits is consistent with prior Section 10(f) determinations made for other periods under Docket No. E-6384.

We have carefully considered the several submissions of the various interested parties. For the reasons stated above, and those stated in our order issued April 30, 1964,[6] we approve the staff's recommended payments based upon estimates of actual energy gains.

The non-Federal parties state, also, that they will endeavor to make a settlement among themselves concerning payments to non-Federal parties, subject to our approval under Section 13.1 of the Regulations under the Federal Power Act, involving headwater benefits accruing during the entire period January 1, 1949, through August 31, 1961. These parties shall make such filing within ninety days of the issuance of this order.

---

[6] 31 FPC 1044 (1964).

The Commission finds:

(1) The purpose of the present investigation is to determine what payments should be made to the United States in accordance with the provisions of section 10(f) of the Federal Power Act, for headwater benefits received during the period of January 1, 1957, through August 31, 1961, from its headwater improvements in the Columbia River basin.

(2) The three Federal headwater improvement projects included in the present determination are Hungry Horse and Grand Coulee, operated by the Bureau of Reclamation, and Albeni Falls, operated by the Corps of Engineers.

(3) The headwater improvements and the hydroelectric plants, both Federal and non-Federal, benefited are listed in the following tabulation:

Owner	Headwater improvement		
	Hungry Horse	Albeni Falls	Grand Coulee
	Plants benefited		
United States	Hungry Horse		
TMPC	Kerr		
TMPC	Thompson Falls		
TWWPC	Noxon Rapids		
TWWPC	Cabinet Gorge		
United States	Albeni Falls	Albeni Falls	
Pend Oreille PUD	Box Canyon	Box Canyon	
United States	Grand Coulee	Grand Coulee	Grand Coulee.
United States	Chief Joseph	Chief Joseph	Chief Joseph.
Chelan PUD	Rock Island	Rock Island	Rock Island.
Grant PUD	Priest Rapids	Priest Rapids	Priest Rapids.
United States	McNary	McNary	McNary.
United States	The Dalles	The Dalles	The Dalles.
United States	Bonneville	Bonneville	Bonneville.

(4) In computing the benefits and the payments to be made therefor by non-Federal parties to the United States, estimates of actual gains were used and the same procedures were followed as those employed in the investigation of headwater benefits provided during the period January 1949 through December 1956. However, payments were limited to 0.55 mill per kilowatt-hour instead of to 0.49 mill per kilowatt-hour as was done in the earlier period. We approved the payments computed for the earlier period in our order in Docket No. E-6384 issued April 30, 1964. We find that, insofar as the non-assurance of scheduled storage releases is concerned, conditions were the same in both periods. Accordingly, computations should be governed by provisions of Section 11.27(b) of the Commission's Regulations under the Federal Power Act.

Since the purpose of this investigation is to determine payments to be made for headwater benefits occurring in and under conditions existing in past years, annual costs of interest, maintenance, and depreciation, and annual energy gains attributable to releases from upstream storage are used. The apportionment formula employed is similar to the formula described in Section 11.27(a) of the Regulations. The costs apportioned to non-Federal projects constitute the payments to be made to the United States by the several parties.

In making the apportionment of cost, a limit of 0.55 mill per kilowatt-hour was set to insure that costs apportioned to downstream parties would not exceed the value of the energy gains. This same unit value is the limit specified in Section 13(b) of the Pacific Northwest Coordination Agreement executed September 15, 1964, of which all parties involved in this investigation were signatories.

(5) In addition to the charges for headwater benefits computed by the method described in Section (4) of these findings to be payable to the United States by owners of non-Federal hydroelectric projects for the period between January 1,

1957, through August 31, 1961, under Section 10(f) of the Federal Power Act, charges are payable by the same owners to the United States for the cost of the determination made under Section (4) of these findings. Such additional charges are likewise required by Section 10(f) of the Federal Power Act. The combined charges are as follows:

Payer	Payments to the United States		
	For headwater benefits	For FPC costs	Total
The Montana Power Company	$348,400	$1,500	$349,900
The Washington Water Power Co	129,800	550	130,350
PUD No. 1 of Pend Oreille County	102,400	450	102,850
PUD No. 1 of Chelan County	145,000	600	145,600
PUD No. 2 of Grant County	51,700	200	51,900
Totals	777,300	3,300	780,600

(6) The charges assessed in this proceeding for benefits conferred by headwater improvements are equitable, based upon all facts and circumstances existing during the period of January 1, 1957, through August 31, 1961.

The Commission orders:

(A) The payments to the United States for headwater benefits which have accrued to the owners of the non-Federal hydroelectric projects for the period January 1, 1957 through August 31, 1961, and the cost to each non-Federal owner for making such determination, all assessed pursuant to Section 10(f) of the Federal Power Act, are as follows:

Payer	Payments to the United States		
	For headwater benefits	For FPC costs	Total
The Montana Power Company	$348,400	$1,500	$349,900
The Washington Water Power Co	129,800	550	130,350
PUD No. 1 of Pend Oreille County	102,400	450	102,850
PUD No. 1 of Chelan County	145,000	600	145,600
PUD No. 2 of Grant County	51,700	200	51,900
Totals	777,300	3,300	780,600

(B) The payments specified in paragraph (A) above shall be paid within sixty days from the date of issuance of this order.

Commissioner Ross *dissenting.*

Ross, *Commissioner, dissenting:*

In my opinion the comments submitted by the parties are not in sufficient detail to permit a resolution of the issues and I therefore would have set this matter for hearing before making a final determination.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

THE EMPIRE DISTRICT ELECTRIC COMPANY, DOCKET NO. E-6711

DETERMINATION OF CHARGES FOR HEADWATER BENEFITS

(Issued April 30, 1965)

The Commission by order of October 29, 1956, 16 FPC 1109, instituted an investigation under Section 10(f) of the Federal Power Act to enable it to determine what part, if any, of the annual cost of interest, maintenance, and depreciation on the United States' Table Rock project on the White River, Arkansas, should be charged to The Empire District Electric Company (Company) for headwater benefits received at its downstream Ozark Beach project, licensed as Project No. 2221.

The Corps of Engineers' Table Rock project, located on the White River at river-mile 529, was completed in 1961 for flood control and power production. The gross head at the plant is 204 feet. The average annual generation is estimated to be 493,000,000 kilowatt hours. The storage capacity of the reservoir at elevation 931 feet amounts to 3,462,000 acre-feet. Above elevation 915 feet are 760,000 acre-feet of capacity used for the control of floods, and between elevations 915 feet and 881 feet are 1,181,500 acre-feet of storage capacity which may be utilized for the production of power.

The Company's Ozark Beach project is located on the White River 23 miles below Table Rock Dam. The storage capacity of the Ozark Beach reservoir, Lake Taneycomo, below elevation 697 is 58,891 acre-feet, of which only about 9,000 acre-feet are used for daily or weekly pondage. The power plant consisting of four generating units of 4,000 kilowatts each was placed in operation in 1913.

The Company is charged below only for headwater benefits received from September 24, 1960 when it is estimated that the value of the Company's power gains from streamflow regulation provided by the Table Rock reservoir offset the value of its earlier power losses from the initial filling of the upstream reservoir.

The staff report on its investigation, which recommended the findings and determinations made below, was sent for comment to the Company, the Chief of Engineers of the Department of Army, and the Secretary of the Interior, all of which have submitted comments on the staff report.

Upon Consideration of the Staff Report and the Aforesaid Comments, the Commission Determines:

(1) As of September 24, 1960, the value of The Empire District Electric Company's power gains from streamflow regulation offset the value of its earlier power losses from the filling of the upstream Table Rock reservoir.

(2) The equitable proportion of the annual charges for interest, maintenance, and depreciation on the Table Rock project to be paid by The Empire District Electric Company to the United States for headwater benefits received at its Ozark Beach project between September 24, 1960, and December 31, 1963 is $123,110.

The Commission finds:

The cost to the Commission of making the determination herein is $23,000.

The Commission orders:

Payment to the Commission of the sum of $123,110 and $23,000 for the purposes stated above shall be made by The Empire District Electric Company within sixty (60) days from the date of issuance of this determination.

MICHIGAN CONSOLIDATED GAS COMPANY, DOCKET NO. CP65-38; MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP65-39

ORDER ADOPTING DECISION OF PRESIDING EXAMINER

(Issued April 30, 1965)*

Syllabus

1. Commission, upon its own review [no exceptions having been filed] *adopts* initial decision certificating facilities and sales to provide initial gas service in the Upper Peninsula of Michigan. P. 913.
2. Commission *rejects* contention that controlling policy requires pipeline's certificate be conditioned to require renegotiation of distributor-industrial customer agreement to obtain ten-year, rather than five-year, no-escape-clause contract—whether any condition is required depends upon all facts and circumstances of particular case. P. 921.
3. Commission *issues* certificate of public convenience and necessity under Section 7 of the Natural Gas Act.

Arthur R. Seder, Jr. for Michigan Consolidated Gas Company.

Charles V. Shannon and *Louis Flax* for Michigan Wisconsin Pipe Line Company.

F. Vinson Roach, Justin R. Wolf, C. A. Case, Jr., J. C. Osborne, D. B. O'Brien, Jr. and *Stanley Wanger* for Northern Natural Gas Company.

Frank J. Kelly and *Hugh B. Anderson* for Michigan Public Service Commission.

William E. Torkelson for Public Service Commission of Wisconsin.

James R. Fitzharris for City of Escanaba, Michigan.

Reuben Goldberg and *George Spiegel* for Michigan Gas and Electric Company.

Glen H. Bell for Lake Superior District Power Company.

Albert J. Feigen for Peninsular Gas Company.

John W. Scott and *Louis L. DaPra* for Minnesota Valley Natural Gas Company.

Mark W. Putney for Iowa Power and Light Company.

Jerome J. McGrath for Upper Lake Docks Coal Bureau, Inc.

Edward J. Hartman for Iowa-Illinois Gas and Electric Company.

George C. Pardee for Metropolitan Utilities District of Omaha.

J. F. Kinney for Iowa Public Service Company.

Lloyd J. Marti for Western Power & Gas Company.

George C. Mastor for Minneapolis Gas Company.

John F. Gaston for Iowa Electric Light and Power Company.

Ned Willis for North Central Public Service Company.

Seymour Tabin for Wisconsin Public Service Corporation.

David B. Ward and *Charles R. Brown* for the Staff of the Federal Power Commission.

---

*Initial decision appears on p. 913.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

This proceeding, which is before us on Presiding Examiner Francis L. Hall's decision issued April 12, 1965, involves an application by Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) under Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction of facilities and the sale of natural gas to its affiliate, Michigan Consolidated Gas Company (Michigan Consolidated), for resale in 36 communities in the southern portion of the Upper Peninsula of the State of Michigan. Michigan Consolidated filed a companion application under Section 7(a) to obtain this supply of gas.

The Examiner would certificate the proposed facilities and sales subject to the jurisdiction of the Commission. No party filed exceptions to the Examiner's decision, and the time for filing exceptions has expired. We have reviewed the Examiner's decision in accordance with Section 1.30(d)(2) of the Commission's Rules of Practice and Procedure.

The Commission finds:

Upon consideration of the entire record in this proceeding, the above-described decision of the Presiding Examiner should be adopted as the decision of the Commission.

The Commission orders:

The above-described decision of the Presiding Examiner, issued April 12, 1965, in this proceeding, is hereby adopted and shall become effective as the decision of the Commission as of the date of issuance of this order.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON APPLICATIONS FILED PURSUANT TO SECTION 7 OF THE NATURAL GAS ACT

(Issued April 12, 1965)

HALL, *Presiding Examiner:* Involved here is the joint proposal of Michigan Consolidated Gas Company (Michigan Consolidated) and its affiliate, Michigan Wisconsin Pipe Line Company (Michigan Wisconsin), to initiate natural gas service in 36 cities, villages, and townships in Delta, Iron, Dickinson, and Menominee Counties located in the southern part of the Upper Peninsula of Michigan.

The gas supply for the Upper Peninsula area will be provided by Michigan Wisconsin to Michigan Consolidated at a new delivery point near Menominee. Michigan, for transmission and distribution through a system to be constructed by Michigan Consolidated.

As hereinafter pointed out (infra, pp. 917–919), there was an area of mutual exclusiveness between the Michigan Consolidated-Michigan Wisconsin proposal and the application of Northern Natural Gas Company (Northern) as to which *Ashbacker Radio Corp.* v. *Federal Communications Commission*, 326 U.S. 327, required the comparative hearing ordered by the Commission in this proceeding. But the present intention of Northern to serve only the noncompetitive or northern part of the Upper Peninsula area makes it unnecessary to consider the comparative merits of the two proposals.

Because Northern is not now in competition for a certificate to serve the competitive area, the issues to be decided are narrowed to the certificate issues related to each of the two proposals. This prompts the Examiner to consider each proposal in a separate decision. The Michigan Consolidated-Michigan Wisconsin applications to provide natural gas service in the southern portion of the Upper Peninsula is therefore the subject of this decision.

A separate decision, issued by the Examiner simultaneously with this decision, also grants Northern's present proposal to provide service in the noncompetitive or northern part of the Upper Peninsula of Michigan and in northern Wisconsin.

Michigan Consolidated is a present customer of Michigan Wisconsin and is the largest distributor of natural gas in the State of Michigan. It filed its application pursuant to Section 7(a) of the Natural Gas Act (Act) for the purpose of obtaining a supply of gas from Michigan Wisconsin at Menominee. It requests the Commission to authorize and direct Michigan Wisconsin to extend its existing pipeline facilities a distance of 4.8 miles to the vicinity of Menominee and to deliver and sell natural gas to Michigan Consolidated at this point.

Michigan Wisconsin, a natural gas company subject to the Commission's jurisdiction, filed its companion application under Section 7(c) of the Act requesting certificate authority to construct and operate the facilities and to make the sale of gas sought by Michigan Consolidated.

The estimated peak day and annual requirements of Michigan Consolidated for service in the Upper Peninsula area in the third year are 39,973 Mcf and 5,400,000 Mcf, respectively (46,292 Mcf maximum day and 6,213,741 Mcf annually in fifth year).

Treating the Upper Peninsula requirements as part of its over-all market requirements, Michigan Consolidated seeks in this proceeding to increase it purchases from Michigan Wisconsin by 10,000 Mcf per day out of volumes of unallocated gas currently available on Michigan Wisconsin's system, thereby increasing its maximum daily quantity (MDQ) entitlement to 543,627 Mcf. This would have the effect of increasing its annual contract quantity (ACQ) by 1.9 billion cubic feet to 103.3 billion cubic feet.

Because of Michigan Consolidated's unique supply situation (see *infra*, pp. 925-926), the decision to seek an additional 10,000 Mcf of MDQ from Michigan Wisconsin was not dictated by Michigan Consolidated's need for the additional gas but was intended primarily to provide Michigan Wisconsin with additional revenues sufficient to cover the cost of the additional facilities necessary to deliver the quantities of gas required by Michigan Consolidated at Menominee.

The total estimated cost of the new facilities required to serve the southern part of the Upper Peninsula is $15,788,830—$14,126,830 for the transmission and distribution facilities to be constructed by Michigan Consolidated and $1,682,000 for the facilities to be constructed by Michigan Wisconsin.

Michigan Consolidated operates wholly within the State of Michigan, having its principal place of business at Detroit. While not subject to the Commission's jurisdiction, it is regulated by the Michigan Public Service Commission.

The Michigan Commission found Michigan Consolidated's proposed system to be economically feasible and in the public interest and certificated the project contingent upon approval by the Federal Power Commission of the Michigan Consolidated-Michigan Wisconsin proposal involved herein.[1]

In a prior proceeding the Federal Power Commission indicated that natural gas service to the Upper Peninsula of Michigan "would be desirable" (22 FPC at 792). The immediate granting of the present proposals of both Michigan Consolidated-Michigan Wisconsin and Northern assures initiation of service in this area (and in northern Wisconsin) by the Fall of 1965.

---

[1] A public hearing was held before the Michigan Commission on July 22-23 and September 14-18, 1964, at which Michigan Gas and Electric Company, Northern, Upper Peninsula Fuels Research, Inc., and representatives of interested municipalities intervened and participated.

Furthermore, approval of both proposals enables natural gas service to be provided over wider areas and to a substantially larger number of consumers than initially contemplated by either proposal standing alone, and will bring new hope to those receiving the service for it will provide them with help they need to help themselves.

The avid interest shown by those in the Upper Peninsula and northern Wisconsin in obtaining natural gas service is of the type being manifested throughout the country as local areas with economic bottlenecks press their efforts to achieve economic growth, higher standards of living, and make needed contributions to the Nation's economy.[3]

Natural gas has demonstrated that it fits the needs of all communities and areas. It is a part of today's modern way of life and industrial activity. Moreover, the twin pressures of population and industrial expansion make it necessary that all possible areas be developed with extra vigilance.

Background

Michigan Consolidated's interest in serving the Upper Peninsula extends back to 1959. In that year Michigan Wisconsin filed a certificate application (Docket No. G-18316) proposing to deliver and sell 37,200 Mcf per day of natural gas to Michigan Consolidated at Menominee for service in the Upper Peninsula. Michigan Consolidated in turn proposed to transport the gas from Menominee into the Upper Peninsula for sale to Michigan Gas and Electric Company, the City of Escanaba and Cleveland Cliffs Iron Company.

The Commission approved Michigan Wisconsin's application to supply 37,200 Mcf per day at Menominee for service to the Upper Peninsula but concluded that, while Michigan Consolidated's proposal was economically feasible, the allocation of gas should be made to Michigan Gas and Electric Company because it was the local distributor of gas in the area (22 FPC 775, 792-796). However, Michigan Gas and Electric Company was unwilling to purchase gas from Michigan Wisconsin at Menominee under the conditions contained in the Commission's order and instituted litigation in which the action of the Commission was upheld (*Michigan Gas and Electric Co.* v. *Federal Power Commission*, 290 F. 2d 374, cert. den. 368 U.S. 897).[3] Following the litigation the Commission terminated the allocation to Michigan Gas and Electric Company of 37,200 Mcf per day (27 FPC 180).

---

[3] While the additional service proposed to be provided by Northern and Michigan Consolidated-Michigan Wisconsin does not fall into either the marginal or submarginal category, it is clearly desirable and appropriate for any public utility with massive resources and skills, which is willing and able to do so, and which is making either a fair or more than a fair return, to extend service to additional areas even where the proposed additional service falls, in an economic sense, into the marginal or submarginal category when considered apart from the utility's total business.

Where this has happened, and it has happened many, many times, the public utility cements its invaluable relations with the general public and absorbs any losses without encountering financial stresses and strains in its over-all operations. In this regard, the Manager of the Marketing and Forecasting Departments of Michigan Consolidated (and of Michigan Wisconsin and American Louisiana Pipe Line Company (American Louisiana)) testified that "there are many communities and areas that we have extended to on a main line extension basis without looking at the economics" (Tr. 603). In short, Michigan Consolidated has not wasted its ability and capacity to provide needed additional service. This is the type of service which, in the long run, is apt to turn out to be a utility-community partnership of mutual benefit. It is impossible for many distressed areas and communities to improve their economic status unless public utilities are public spirited enough to help them out of their doldrums, when they are able to do so, by providing needed utility services. There are, of course, limits to which any utility may go.

It therefore appears that regulatory agencies might serve the public interest best by encouraging gas utilities to funnel more of their success into wider service areas. "The various parts of a public utility's system need not and cannot be equally profitable", *Minneapolis Gas Co.* v. *Federal Power Commission*, 278 F. 2d 870, 871, cert. den. 364 U.S. 891. It is settled that all that is required is that the over-all operations be sufficient to give the net returns to which the utility is entitled. *Puget Sound Traction, Light and Power Co.* v. *Reynolds*, 244 U.S. 574, 580-581; *St. Louis and San Francisco Railway Co.* v. *Gill*, 156 U.S. 649, 665-666. Any qualified applicant under the Act may, of course, be granted a certificate if (1) it "is able and willing properly to do the acts and perform the service proposed" and (2) the proposed service "is or will be required by the present or future public convenience and necessity." Section 7(c).

However, during the period of litigation, Michigan Wisconsin had constructed a 16-inch line from Weyauwega to Marinette, Wisconsin, in order to supply gas to the Upper Peninsula whereas an 8-inch and 6-inch line would otherwise have been sufficient to serve all the markets up to Marinette. Thus, since 1960 Michigan Wisconsin has had pipeline facilities specifically installed for service to the Upper Peninsula (See 22 FPC at 795).

Michigan Consolidated has now formulated the new project proposed herein.[4]

As stated, Michigan Wisconsin has the transmission facilities to enable it to render the Upper Peninsula service except for the compressor horsepower and the 4.8 miles of pipeline from Marinette (at the Wisconsin-Michigan border) to Menominee. Thus Michigan Wisconsin has had excess and unused capacity in this part of its system, the cost of which has been borne by customers of Michigan Wisconsin deriving no benefit therefrom. Michigan Wisconsin now seeks to put the previously constructed facilities to the same use for which they were originally constructed, namely, service to the Upper Peninsula.

History Of Present Proceeding

The Michigan Consolidated-Michigan Wisconsin proposal to serve the southern part of the Upper Peninsula was filed August 10, 1964, being thereafter supplemented to provide additional information.

On November 9, 1964, the Commission issued its order (1) consolidating the Michigan Consolidated-Michigan Wisconsin proposal with the partially competing proposal of Northern, Docket No. CP64–255 (Phase II), for comparative hearing and consideration; (2) requiring all evidence in support of the two proposals to be served by December 18, 1964; and (3) fixed January 26, 1965 (later changed to February 2, 1965) as the date for the beginning of cross-examination.

Rulings of the Examiner issued December 28, 1964, and January 8, 1965, further organized the hearing procedure. These rulings, issued on the Examiner's own motion, were made for the convenience of the parties and their witnesses and to eliminate possible confusion and causes that otherwise might have existed for a protracted hearing. The rulings established the order in which the 31 witnesses were to be cross-examined; identified all exhibits by number; permitted the witnesses to adopt their prepared direct testimony at the time they appeared for cross-examination rather than at the outset of the hearing; and required all evidence in opposition to either or both proposals, if any, to be served by January 20, 1965. No such evidence was filed. Moreover, all parties waived presentation of rebuttal evidence following completion of cross-examination on the direct presentations.

---

[3] The litigation immobilized all plans for the supply of gas to the Upper Peninsula until after conclusion thereof.

[4] Following termination of the allocation of gas to Michigan Gas and Electric Company, Michigan Consolidated reviewed the possibility of extending natural gas service to the Upper Peninsula. As a result of experience gained in extending gas service into new communities in the Lower Peninsula, it determined that, on the basis of its regular outstate rates, it could convert a very substantial part of the market in the Upper Peninsula to natural gas in the first five years of service.

Michigan Consolidated believed it necessary to obtain a commitment from Hanna Mining Company to use gas in its pelletizing operations before going forward with the project, since the economic feasibility of the project (when considered in isolation from Michigan Consolidated's total business) is dependent, in its initial stages, upon such a sale. Its agreement with the Hanna Mining Company was executed on July 2, 1964, and was the first such contract signed with a mining company in the Upper Peninsula.

Michigan Consolidated then obtained franchises and permits from the communities it proposes to serve and filed its applications with the Michigan Commission and the Federal Power Commission.

Public hearings covering fourteen hearing days were held on January 15[6] and February 2–5, 8–12, 15–18, 1965. The record made consists of 2201 pages of testimony, 78 exhibits, four of which were withdrawn, and Items A through F received in evidence by reference to the official files of the Commission.

Briefs by counsel for Michigan Public Service Commission, Northern, Michigan Wisconsin, Michigan Consolidated, City of Escanaba, Michigan Gas and Electric Company, Lake Superior District Power Company, Peninsula Gas Company, and a statement of position by the Public Service Commission of Wisconsin, were filed on March 1, 1965. Briefs by counsel for the Commission Staff, Upper Lake Docks Coal Bureau, Inc., Minnesota Valley Natural Gas Company, and a joint brief by eight intervener-customers of Northern (Iowa Power and Light Company, Iowa Public Service Company, Metropolitan Utilities District of Omaha, Minneapolis Gas Company, Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin), North Central Public Service Company, and Western Power & Gas Company), were filed on March 15, 1965. Oral argument, in lieu of reply briefs, was heard by the Examiner on March 18, 1965.

Interveners

The Commission permitted intervention in the consolidated proceeding by the Michigan Public Service Commission, Public Service Commission of Wisconsin, Iowa State Commerce Commission, Metropolitan Utilities District of Omaha, Iowa Electric Light & Power Company, Iowa Public Service Company, Peninsular Gas Company, Minnesota Valley Natural Gas Company, Iowa Southern Utilities Company, City of Escanaba, Michigan, Upper Lake Docks Coal Bureau, Inc., Michigan Gas and Electric Company, North Central Public Service Company, Minneapolis Gas Company, Wisconsin Power & Light Company, Iowa Power and Light Company, Iowa-Illinois Gas & Electric Company, Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin), Iron Ranges Natural Gas Company, Lake Superior District Power Company, Western Power & Light Company, Wisconsin Public Service Corporation, and Suburban Rate Authority (an organization of municipalities within the State of Minnesota).

Consolidation Of Applications For Comparative Hearing

As hereinabove pointed out, the Commission's order issued November 9, 1964, consolidated Northern's proposal in Docket No. CP64–255 (Phase II) with the Michigan Consolidated-Michigan Wisconsin proposal, doing so on the ground that these two proposals being partially competitive insofar as initiating service in the Upper Peninsula of Michigan is concerned,[6] required a comparative hearing[7] to enable consideration to be given to all factors (gas supply, design of facilities, economic feasibility, rates, etc.) entering into the determination of which applicant or applicants, if any, should be authorized to initiate service in the competitive area.

---

[6] No representative of any party appeared at the two-minute hearing held January 15, it having been suggested by the Examiner that appearances were not required for the limited purpose of that session which was to incorporate in Volumes I–A and I–B of the transcript the prepared direct testimony served pursuant to the Commission's order. The reporter was directed to incorporate in Volume I–A (1) the Examiner's introductory statement; (2) the order of the Commission and rulings of the Examiner issued prior to January 15, and (3) the direct testimony of witnesses for Michigan Consolidated, Michigan Wisconsin, and the City of Escanaba, Michigan. To facilitate handling of and reference to the transcript, the reporter was directed to incorporate in Volume I–B (1) the Examiner's further introductory remarks concerning the nature and history of Northern's proposal, and (2) the prepared direct testimony of Northern's 22 witnesses.

The competitive issue was removed from consideration near the close of the consolidated hearing. This resulted from Northern's concession that it would not object to the grant of the authorizations requested by Michigan Consolidated and Michigan Wisconsin to enable Michigan Consolidated to provide natural gas service in the competitive area and in the remaining portion of the southern part of the Upper Peninsula it proposes to serve.[8] Northern also stated that in that event it would accept a certificate authorizing it to construct and operate the facilities required to service its proposed customers in the northern part of the Upper Peninsula of Michigan and in northern Wisconsin.[9] Michigan Gas and Electric Company, Northern's proposed distributor in the competitive area, concurred in Northern's amended position.

---

[6] Northern's proposed construction included a branch line extending southward for the sale of gas to distributors for resale in 23 of the 36 cities, villages and townships and the Hanna iron ore plant proposed to be served by Michigan Consolidated.

[7] In *Ashbacker* the Supreme Court held that "where two bona fide applications are mutually exclusive the grant of one without a hearing to both deprives the loser" of the hearing to which he is entitled (326 U.S. at 333). As put by Mr. Justice Reed in his dissenting opinion in *Midwestern Gas Transmission Co.* v. *Federal Power Commission,* 258 F. 2d 660, 671, "Where competing gas companies seek certificates * * * from the * * * Commission for service to the same consumer groups, the law requires as a matter of fairness that the FPC hear all applicants in the same proceeding, with opportunity to all parties to examine the proposals of one another, so as to bring out before the Commission the facts necessary for the Commission to properly appraise the public interest as between the contending suppliers. This is the doctrine of *Ashbacker* * * *. No one questions its soundness, where applicable."

[8] Northern's concession did not constitute an amendment of its application at Docket No. CP64–255 (Phase II). Rather it proceeded on the basis that the Commission may authorize only part of what is requested in its application, pointing out that under Section 7(e) of the Act the Commission may issue a certificate "authorizing the whole or any part of the operation, sale service, construction * * * covered by the application * * *."

[9] Northern's concession was made in response to remarks of the Examiner appearing at transcript pages 1653–1654 and 1656–1661 concerning the desirability of the earliest disposition of these proceedings. The Examiner stated in part:

> If counsel anticipate that the end result will be the approval of [the Michigan Consolidated-Michigan Wisconsin] proposal, or are now willing to make the necessary concessions, it may be that there will be no objection to the separate and immediate consideration and disposition thereof in the same manner as the Commission disposed of Phase I of Northern's construction program.
>
> * * * * * * *
>
> What the Examiner is searching for is the most efficient and responsible action that can now be taken, particular interest being centered on the possibility of converting the remainder of this hearing into a certificate proceeding * * *.
>
> * * * * * * *
>
> If service could be provided in the Upper Peninsula area through both proposals, that is, with Northern serving the upper segment and Michigan Consolidated * * * the lower segment, it is clear that service would cover a wider area * * *.
>
> * * * * * * *
>
> The Examiner's remarks have to some extent been dictated by the fact that weather conditions in the Upper Peninsula area permit a limited construction period, so that it is entirely possible that a delay of as much as thirty to sixty days in reaching a decision could effectively foreclose initiation of natural gas service in any part of the Upper Peninsula for at least a year, assuming such service is found to be justified.
>
> Accordingly any delay that can be circumvented should be circumvented to provide adequate lead time, perfection of plans, holding costs and efforts to a minimum, and last, but by no means least, avoiding further disappointment to the general public * * *.
>
> The Examiner's remarks may seem strange to anyone accustomed to extended trials

The record is clear that construction of Michigan Consolidated's project enhances the economic feasibility of the remaining portion of Northern's proposal. Northern's proposed distributor-customers, Michigan Gas and Electric Company, Peninsula Gas Company, and Lake Superior District Power Company have demonstrated markets supporting the present Northern project, and Northern has a firm contract to serve Cleveland Cliffs Iron Company at various points near Marquette, Michigan, complementing such utility markets.

Operations Of Michigan Wisconsin And Michigan Consolidated

Michigan Wisconsin owns and operates an interstate pipeline system extending from the Hugoton Field, in Texas, to its termini in Michigan and Wisconsin and sells natural gas at wholesale to 33 distribution utilities, its largest sales being made to two affiliates, one being Michigan Consolidated.

Michigan Wisconsin obtains its gas supply from (1) producers in some of the states traversed by its pipeline, (2) American Louisiana,[10] (3) Northern, and (4) Midwestern Gas Transmission Company (Midwestern). In addition to the ownership and operation of its interstate transmission system, it also operates extensive underground storage fields.

Michigan Consolidated purchases gas from Michigan Wisconsin; American Louisiana, and Panhandle Eastern Pipe Line Company (Panhandle). It also has substantial production and storage of its own in Michigan. Michigan Consolidated transmits and distributes natural gas in the State of Michigan, being the largest distributor in that State, serving Detroit, Ann Arbor, Muskegon, Grand Rapids, Traverse City, Mt. Pleasant, Petoskey, Alpena and numerous other communities.

As hereinabove noted, Michigan Consolidated has for a number of years sought to provide natural gas service to the Upper Peninsula area, this being another step in the progressive development of the company to meet the requirements of the growing public demand for gas.

As of December 31, 1963, Michigan Consolidated served natural gas in 193 communities, operated 9,000 miles of pipeline facilities and sold over 250,000,000 Mcf of natural gas annually. Its net plant totaled $361,444,247 at December 31, 1963, and it supplied over 900,000 customers.

Michigan Consolidated, Michigan Wisconsin and American Louisiana are all wholly-owned subsidiaries of the American Natural Gas System.

---

by battle, but in a Commission proceeding an Examiner's task no longer can be considered to be simply to sit, listen and ultimately to decide.

He must, if he thinks there may be justification for his action, attempt to bring the proceeding to the earliest conclusion consistent with the facts, issues and the public interest involved.

* * * [T]here can be situations in which the merits are compelling and which can cause prudent action to be taken during the hearing which will provide strength and efficiency all along the line.

The friendly opposition which has been reflected in this proceeding might very well be converted into friendly cooperation. * * *

The Examiner hopes that his suggestion will commend itself to those involved * * *.

In this connection, experience has too often shown that action delayed may mean service denied.

Parties can act in the public interest when not standing on their private rights and sinking into narrow private concerns.

[10] American Louisiana owns and operates an interstate natural gas pipeline running from southern Louisiana to Michigan. Currently, it sells over 95 percent of its natural gas to Michigan Consolidated and Michigan Wisconsin.

Issue Presented

The issue presented is whether the public convenience and necessity requires the construction of the Michigan Consolidated-Michigan Wisconsin project. The evidence clearly supports the finding that the public convenience and necessity does so require.

Near the close of the hearing, and in connection with Northern's statement that it would not object to the certification of the Michigan Consolidated-Michigan Wisconsin project, it was agreed that, in deciding the issue presented, Northern would be permitted to argue and obtain a ruling upon the question of whether the certificate issued to Michigan Wisconsin should be conditioned so as to require Michigan Consolidated to obtain a ten-year (instead of a five-year) industrial gas sales contract with the Hanna Mining Company containing no escape clauses, it being alleged that controlling Commission policy requires execution and filing of such a contract as a condition for the issuance of a certificate.[11]

The circumstances of this certificate proceeding are such as to make necessary the Commission's consideration of the total of the Michigan Consolidated-Michigan Wisconsin proposal even though the Commission lacks jurisdiction over Michigan Consolidated (22 FPC at 794). Appropriate regard is had, of course, for the prior action of the Michigan Commission in finding Michigan Consolidated's project economically feasible and in the public interest.

Had it not been for Northern's partially competing application, the Michigan Consolidated-Michigan Wisconsin proposal involved herein would undoubtedly have been processed unopposed in the same manner as the Commission, on June 2, 1964, in Docket No. CP64-154, *et al.*, 31 FPC 1333, enabled Michigan Consolidated to proceed with its new project in the northern part of the Lower Peninsula of Michigan known as the Alpena-Gaylord project.

The present proposal to serve the Upper Peninsula area is very similar in cost and markets to Michigan Consolidated's $15,000,000 expansion into Alpena, Gaylord and a number of other communities. Michigan Consolidated accordingly formulated its project to act both as a transporter and distributor of gas in the Upper Peninsula based upon charging consumers the rates paid by customers throughout the company's outstate districts in the lower Peninsula.

---

[11] Initially Northern conditioned its withdrawal from the competitive area upon a Commission requirement that Michigan Consolidated obtain a firm ten-year contract with the Hanna Mining Company with no escape clauses. This led the Examiner to observe in part (Tr. 2105-2107):

> The certificate issues cannot be reached until the answer to the competitive issue is known. At this stage of the proceeding it is within Northern's prerogative to determine for itself whether it will or will not withdraw its proposal to the extent that it relates to the competitive area. If it does determine to withdraw, the competitive issue is eliminated from further consideration.
>
> But it does not appear appropriate for any applicant to attempt to make a determination as to the merit or lack of merit of any part of the certificate issues, for that would invade the province of the Commission. * * *
>
> * * * * * * *
>
> It is for the Commission, and for the Commission alone, to determine what is or is not consistent with its policy and whether and under what circumstances a departure therefrom is justified.
>
> * * * * * * *
>
> If Northern does not see its way clear to withdraw [from] * * * the competitive area, without insisting upon the type of industrial contract referred to, it is still free to make its own decision.
>
> The point of the Examiner's remarks is that it seems clearly inappropriate for Northern to condition its withdrawal from the competitive area in the manner indicated.
>
> If Michigan Consolidated chooses to stand on the type of agreement it has, it appears that it should have a right to do so subject to Commission action.

Subsequent to these remarks by the Examiner, Northern amended its position in the manner hereinabove indicated. That is to say it reserved only the right to argue and obtain a ruling on the point.

The rates to be charged by Michigan Consolidated reflect the "rolled-in" concept of rate making, this being a method which "has many apparent advantages and the Commission has repeatedly stated a general preference for it whenever it may equitably be used" (*Battle Creek Gas Co.* v. *Federal Power Commission*, 281 F. 2d 42, 46). As the court further points out, "Use of the rolled-in method * * * serves the interest of equal treatment for customers receiving equal service."

What Michigan Consolidated has in effect done is determine the economic feasibility of the Upper Peninsula project on an isolated basis, then causing this project to lose its separate identity by merging its costs, gas supply, operations, etc., into Michigan Consolidated's system-wide operations. Having thus diffused these items among its total operations, Michigan Consolidated is then able to apply rates of general applicability to the additional service to be rendered in the Upper Peninsula.

Northern's Claim Relating To Michigan Consolidated's Contract With Hanna

Citing *Northern Natural Gas Company, et al.*, 22 FPC 164, and *Midwestern Gas Transmission Company*, 22 FPC 775, in support of their position, counsel for Northern contend that controlling Commission policy requires that the certificate issued to Michigan Wisconsin be conditioned to require Michigan Consolidated to renegotiate its agreement with the Hanna Mining Company and obtain a ten-year, rather than a five-year, no-escape-clause contract.

A review of the two decisions relied upon by Northern, as well as other decisions cited by counsel opposing Northern's contention,[13] makes it abundantly clear that Northern is in error in claiming that the Commission has an inflexible rule requiring a contract for a specified number of years. On the contrary, the Commission has held that the question of whether any contract is required, and if so, what terms and conditions must be satisfied, depends upon all the facts and circumstances of the particular case. The root question is one of economic feasibility.

The Commission's approach to the question of requiring industrial contracts was well stated in *Northern Natural Gas Company*, 30 FPC 859, 864:

> The Commission concluded long ago in *Kansas Pipeline & Gas Co.*, 2 FPC 29, that there is no reason to require certificate applicants in all cases to obtain firm commitments from their anticipated customers. It is sufficient, the Commission held, "if the applicants show that, on the basis of experience in similar territory, there are reasonable grounds for anticipating that customers will be attached to the proposed facilities." 2 FPC at 45. Stated generally, the rule which has developed for expansions which include sales to large volume industrial customers is that firm commitments will be required only where the contemplated sales appear to have a strong bearing on the economic feasibility of the project and where there is reason to question whether in fact the sales will be made. See *Kansas-Nebraska Natural Gas*

---

[13] *Atlantic Gulf Gas Company*, 10 FPC 79; *Southern Natural Gas Company*, 31 FPC 789, 1387, Opinion Nos. 424 and 424–A; *Panhandle Eastern Pipe Line Company*, 15 FPC 1421; *Northern Natural Gas Company*, 30 FPC 859; *Northern Natural Gas Company*, 25 FPC 540; *Transcontinental Gas Pipe Line Corporation*, 17 FPC 360; *Houston Texas Gas and Oil Corporation*, 16 FPC 118; *City of Grant City, Missouri*, 29 FPC 754; *Kansas-Nebraska Natural Gas Company, Inc.*, 29 FPC 1058; *Kansas Pipeline & Gas Company*, 2 FPC 29; *General Gas Pipe Line Corporation*, 2 FPC 705; *El Paso Natural Gas Company*, 29 FPC 984.

Co., Inc., 29 FPC 1058, 1067 * * *; *City of Grant City, Mo.*, 29 FPC 754, 758 * * *; *Midwestern Gas Transmission Co.*, 22 FPC 775.

The Commission's primary concern is the economic feasibility of the pipeline's project and the effect of the loss of a substantial load upon its existing customers and their customers. One type of case in which the Commission sometimes requires contracts between distributors and large-volume industrial customers involves the situation in which the ability of distributors to purchase gas from the pipeline—and thus, in turn, the economics of the pipeline's project—is dependent upon consummation of the industrial contracts. This is the situation involved in both of the decisions relied upon by counsel for Northern. Thus, in *Northern Natural Gas Company*, 22 FPC 164, the Commission required Iron Ranges Natural Gas Company, which was a "paper" company with no existing operations, to obtain a contract with Reserve Mining Company before Northern was authorized to construct pipeline facilities to supply gas to Iron Ranges. Clearly the collapse of Iron Ranges' proposed operations, which in fact occurred when it failed to obtain a contract with Reserve Mining Company (see *Northern Natural Gas Company*, 25 FPC 540) would have had a serious effect upon the Northern-Iron Ranges project. In the other case, *Midwestern Gas Transmission Company*, 22 FPC 775, the addition of the Upper Peninsula load, two-thirds of which was represented by proposed sales to Cleveland Cliffs Iron Company, would have more than doubled Michigan Gas and Electric Company's existing purchase obligations and gas plant investment. The loss of the Cleveland Cliffs load by Michigan Gas and Electric Company (which never constructed its Upper Peninsula project, see *supra*, pp. 915, 916) would have been a catastrophic loss for that company, the effects of which would also have been visited upon Michigan Wisconsin and its customers. Accordingly, a ten-year contract between Michigan Gas and Electric Company and Cleveland Cliffs was an entirely reasonable condition within the facts of that case, but has no rational relation to the necessity for Michigan Consolidated to obtain a similar contract with Hanna.

In Michigan Consolidated's case, none of the above referred to considerations are present. Michigan Consolidated is a large, established company with in-depth resources, 900,000 customers and assets of about $400,000,000. The facilities to be installed by Michigan Wisconsin for the service requested are minor, and there can be no question of Michigan Consolidated's ability to continue to pay the demand charges on the additional 10,000 Mcf per day of MDQ sought herein, whether or not the Hanna contract (which will provide only 15 percent of the Upper Peninsula project revenues) is terminated after five years. Pertinent here is the fact that because Michigan Consolidated will treat the Upper Peninsula as a part of its system-wide operations, the economic effect of possible termination of the Hanna contract should be considered, not from the standpoint of an isolated project, but from the standpoint of the entire Michigan Consolidated system. Since the Upper Peninsula sales amount to less than 1 percent of the company's total system sales, the loss of any part of those sales would be *de minimis* with respect to the whole. Moreover, Michigan Wisconsin's small investment in facilities is adequately protected by Michigan Consolidated's 20-year obligation to pay for the additional 10,000 Mcf of MDQ.

Michigan Consolidated proposes to sell 1,500,000 Mcf of natural gas annually to Hanna Mining Company under the terms and conditions of Michigan Consolidated's Rate Schedule No. 7 on file with the Michigan Public Service Commission, subject to the condition that the initial term of the contract under Rate Schedule 7 shall be five years (instead of one year) from the date service is first rendered to Hanna. Service is to be continued from year to year thereafter in accordance with the provisions of the service contract.

The Michigan Commission, which has jurisdiction over Michigan Consolidated retail sales, gave full consideration to Michigan Consolidated's proposal to serve Hanna under Rate Schedule 7 for an initial period of five years, heard the evidence bearing thereon and found nothing requiring that such service be disapproved. In fact, the Hanna sale is comparable to sales being made under the same schedule to Ford, General Motors, Chrysler, McLouth Steel and several hundred other industrial customers in the Detroit area, all of whom buy on a year-to-year basis. In the Examiner's view, reliance on Hanna as a customer is analogous to the situation described in *Kansas Pipeline & Gas Company*, 2 FPC 29, 45, where it was held that contracts are unnecessary if there are reasonable grounds for anticipating the customer will be attached on the basis of experience in similar territory. And it should be remembered that State commissions and the Federal Power Commission regulate "without any confusion of functions" to attain what Congress intended, namely, "a harmonious, dual system of regulation of the natural gas industry—federal and state regulatory bodies operating side by side, each active in its own sphere" (*P.U.C. of Ohio* v. *United Fuel Gas Co.*, 317 U.S. 456, 467).

The Examiner finds nothing in the Hanna contract which is likely to lead either Michigan Wisconsin or Michigan Consolidated into trouble; that Michigan Consolidated's customers are adequately protected by its agreement with Hanna; and that although there appears to be no possibility of a loss of the Hanna sale after the initial five-year term, that load is necessary to the economic feasibility of the project only in the first five years.

System To Be Constructed And Service To Be Rendered By Michigan Consolidated

Before considering Michigan Consolidated's proposed system and service, mention should be made of the fact that at the hearings Michigan Consolidated proposed service to the City of Escanaba on an alternative basis. Escanaba presently operates a municipal propane-air distribution system and the company was interested in buying that system. Accordingly, Michigan Consolidated presented economic studies demonstrating that its project is economically feasible whether it acted as distributor in the City or supplied gas to its municipal system.

During the hearing the City of Escanaba adopted a resolution supporting Michigan Consolidated's project and expressed the desire to purchase gas from Michigan Consolidated on either a retail or wholesale basis. By a telegram dated March 18, 1965, the attorney for the City advised that "On March 16th the Council of the City of Escanaba accepted an offer from Mich-Con to buy the City's gas utility system and the City will sign a sale agreement within a few days." Apparently the purchase of the Escanaba properties by Michigan Consolidated is still subject to the vote of the people.

The estimate of the market witness for the City of Escanaba, predicated upon continued municipal operation of its gas distribution system, was based upon the construction of only 45,700 feet of distribution mains as compared with Michigan Consolidated's proposed construction of 101,415 feet, or over twice the footage proposed by the City as a municipal system. He also used a lower consumption factor for residential space heating use than either Michigan Consolidated or Michigan Gas and Electric Company (.015 Mcf v. .023 Mcf per customer per DDD). He based this estimate on the assumption that customers who heat only part of their houses with gas are classified as space heating customers, which is not the case under Michigan Consolidated's tariff.

Cities, Villages and Townships To Be Served. Michigan Consolidated will provide natural gas service in 36 cities, villages and townships in Delta, Iron, Dickinson and Menominee Counties. The cities are: Escanaba, Caspian, Crystal Falls, Gaastra, Gladstone, Iron Mountain, Iron River, Kingsford, Norway and Stambaugh. The villages are: Daggett, Mineral Hills, Powers and Stephenson. The townships are: Bark River, Bates, Brampton, Breitung, Crystal Falls, Daggett, Escanaba, Felch, Ford River, Harris, Iron River, Masonville, Mellen, Meyer, Nadeau, Norway, Sagola, Spalding, Stambaugh, Stephenson, Waucedah and Wells.

System To Be Constructed by Michigan Consolidated. In addition to the distribution systems to be constructed by Michigan Consolidated, which are estimated to cost $7,936,380 in the fifth year, it will also construct 38.5 miles of 16-inch pipeline from Menominee north to the vicinity of Powers. From that point an 8-inch line will be constructed 21.1 miles east to Escanaba, with a 6-inch lateral extending 9.8 miles to Gladstone. Michigan Consolidated will also construct a 10-inch and 8-inch pipeline extending west and north from Powers Junction 70.4 miles to the Iron River-Stambaugh area, with a 6-inch lateral into the Hanna Mining Company mine. The transmission lines and check meter stations are estimated to cost $6,190,450, making the total cost of both transmission and distribution facilities $14,126,830 in the first five years.

The estimated cost of the facilities is based upon current material quotations and company experience with similar jobs, adjusted for construction conditions expected to be encountered in the Upper Peninsula area.

The 39,973 Mcf to be delivered by Michigan Wisconsin to Michigan Consolidated is the third year peak day requirements of both firm and Rate 7 customers in the Upper Peninsula. The latter (which include Hanna Mining Company) are large volume industrial customers whose deliveries can be curtailed on 30 days' advance notice. Rate 7 customers are curtailed toward the end of the heating season when necessary to conserve gas in Michigan Consolidated's storage fields rather than to meet peak day conditions. Accordingly, Hanna and other Rate 7 customers in the Upper Peninsula might well be served on a peak day occurring earlier in the storage year, and the facilities are designed accordingly. The Upper Peninsula transmission system was sized to meet prospective market requirements and take account of the necessity to meet such requirements under extremely severe winter weather conditions.

Market Requirements. Michigan Consolidated's market witness testified that the number of domestic and commercial customers to be attached in the first five years of service was determined by (1) making a physical survey of the distribution areas to ascertain the number of residential and commercial buildings that are feasible to connect,[13] and (2) applying percentages of connections of customers in each category of service based upon actual connections that Michigan Consolidated has experienced in other new areas in the State.

The market witness sponsored an exhibit showing the percentages of attachment of residential and commercial customers achieved by Michigan Consolidated on a yearly basis in a number of communities in the Lower Peninsula to which it has extended gas service since 1956. He testified that the customer saturations actually achieved are in most cases higher than the percentages used in his market estimate for the Upper Peninsula and that the company's experience in attaching customers in the Alpena-Gaylord area in 1964 was also higher than has been estimated for the first year in the Upper Peninsula.[14]

---

[13] Michigan Consolidated considers a building "feasible to connect" if the required extension of mains does not exceed an average of 150 feet per customer.

[14] The customer saturation experience utilized by Michigan Consolidated indicates that of total residential buildings considered feasible to connect, 40 percent will be attached by the end of the first year of service, and 60 percent, 70 percent, 78 percent and 85 percent in the second through fifth years, respectively, and that 90 percent of such customers will use gas for space heating. Percentages of connection of commercial customers in each of the first five years are 20 percent, 25 percent, 30 percent, 32 percent and 35 percent, respectively, and commercial space heating customer attachments are 40 percent, 60 percent, 72 percent, 78 percent and 85 percent, respectively.

Consumption of gas per customer was also based upon Michigan Consolidated's actual experience in the northern part of Michigan's Lower Peninsula. Estimates of industrial sales were based upon a physical survey of each industrial plant and information as to the type usage and equivalent cost of the fuel presently being used.

In addition to the physical surveys of the area, studies were also made of the population, employment, types of fuel used, types of heating systems, median family income, median value of homes and percent of owner-occupied homes in the southern portion of the Upper Peninsula area. The studies supported the use of the consumption factors and customer saturation percentages used.

The estimates of requirements of 39,937 Mcf on the maximum day and 5,360,463 Mcf annually in the third year (46,292 Mcf maximum day and 6,213,741 Mcf annually in the fifth year) are reasonable.

Gas Supply Relied Upon By Michigan Consolidated. Michigan Consolidated requests that its present MDQ entitlement from Michigan Wisconsin of 533,627 Mcf be increased by 10,000 Mcf, which will increase its ACQ by 1.9 billion cubic feet to 103.3 billion cubic feet. As has been pointed out (*supra*, p. 914), the decision to seek the additional 10,000 Mcf of MDQ was not dictated by Michigan Consolidated's need for the additional gas for it has more than adequate supplies to provide service in the Upper Peninsula. In the future the increasing requirements of that area will be treated like any other requirement on Michigan Consolidated's system and it will include those requirements in its annual nominations of gas supplies from its suppliers.

To meet the Upper Peninsula third year peak day requirements of approximately 40,000 Mcf, Michigan Consolidated will simply direct Michigan Wisconsin to deliver that volume at Menominee rather than at the storage field area in the Lower Peninsula. The 30,000 Mcf of additional peak day capacity required to meet the requirements of Michigan Consolidated's total markets (40,000 less the 10,000 Mcf of MDQ here sought) is readily available as a result of continuing development of its extensive storage field system. Michigan Consolidated has recently completed a program of new wells in its Six Lakes Field which is expected to increase its peak day deliverability by over 100,000 Mcf per day, and the Belle River Mills Field which will be converted from a producing field to a storage field in the Spring of 1965, will provide over 250,000 Mcf per day of peak day ability in the first year, with a future peak day ability of over 500,000 Mcf.

Insofar as annual gas supplies are concerned, there is likewise no question of Michigan Consolidated's ability to meet the requirements of the Upper Peninsula markets, which will be treated as part of Michigan Consolidated's over-all gas supply requirements and constitute less than 1 percent of such requirements.

The annual supply required for the Upper Peninsula over and above the 1.9 billion cubic feet of new supply from Michigan Wisconsin totals only 1.2 billion cubic feet in the first year—an insignificant amount in relation to Michigan Consolidated's total sales of over 263 billion cubic feet last year. The 1.2 billion cubic feet is available from production from Michigan Consolidated's local gas fields[15] and overrun gas from its pipeline suppliers—Michigan Wisconsin, American Louisiana and Panhandle.

In terms of total system gas supply and requirements for the 12 month period commencing September 1, 1965, the firm requirements of Michigan Consolidated's present markets total 235,357 MMcf. Addition of the Upper Peninsula's requirements of 3,105 MMcf results in a total of 238,462 MMcf. To meet these requirements Michigan Consolidated will have firm pipeline supplies totaling 292,205 MMcf annually, including the 1.9 MMcf sought from Michigan Wisconsin in this proceeding and the 18,250 MMcf to be obtained as a result of American Louisiana's 1965 expansion program. Thus Michigan Consolidated has firm pipeline supplies which are 53,743 MMcf per year in excess of the firm requirements of its present customers plus the full requirements of the Upper Peninsula.[16]

---

[15] The Belle River Mills Field alone contains some 35 billion cubic feet of native gas.

Financing. Construction of the Upper Peninsula facilities, which will be only a part of Michigan Consolidated's total annual construction program, will be financed temporarily with short-term bank borrowings and funds generated internally, to be replaced ultimately with first mortgage bonds.

Michigan Consolidated will be able to adequately finance the construction of its transmission and distribution system.

Rates. Michigan Consolidated will charge consumers in the Upper Peninsula the same rates paid by customers throughout the company's outstate districts in the Lower Peninsula of Michigan (see *supra*, p. 921).[17]

Economic Feasibility. Applying Michigan Consolidated's regular outstate rate schedules to estimated sales produces a rate of return of 6.94 percent on the Upper Peninsula project in the fifth year.

Michigan Consolidated's project is economically feasible and the company is eminently qualified to construct and operate the project successfully.

Michigan Wisconsin's Proposed Facilities, Availability of Gas Supply and Economic Feasibility

Facilities. The facilities to be installed by Michigan Wisconsin to supply Michigan Consolidated's third year requirements for service to the Upper Peninsula consist of 4.8 miles of 12-inch pipeline from a point west of the Marinette, Wisconsin meter station to a point near Menominee, Michigan, plus 5,000 compressor horsepower additions (consisting of two 2,500 units) needed to maintain adequate pressures at delivery points in northern Wisconsin as a result of the growth in the Wisconsin markets.

The cost of the facilities, estimated to be $1,682,000, will be financed out of funds on hand.

Availability of Gas Supply. Michigan Consolidated proposes to increase its MDQ allocation of gas from Michigan Wisconsin by 10,000 Mcf per day from 533,627 Mcf to 543,627 Mcf.

Michigan Wisconsin presently has available on its system unallocated firm supply for the maximum day of 11,912 Mcf and annual volumes of 5,460,709. This is more than the 10,000 Mcf of additional MDQ and 1,900,000 Mcf of ACQ sought by Michigan Consolidated in this proceeding.

The physical source of the gas to be delivered at Menominee is Marshfield, Wisconsin, where Michigan Wisconsin purchases gas from Midwestern.

Economic Feasibility. The sale of 10,000 Mcf of additional MDQ and 1,900,000 Mcf of ACQ produces revenues of $799,850. After deducting all applicable operating expenses associated with the proposed service, Michigan Wisconsin will earn in excess of its allowed rate of return of 6.5 percent on the new facilities in each of the first three years of service ($45,948 excess in the third year).

---

[16] The full requirements of Michigan Consolidated's interruptible customers, assuming no curtailment, total 57,997 MMcf, or only 4,254 MMcf in excess of firm pipeline supplies. This volume is available from a number of sources, including overrun deliveries by its three pipeline suppliers and local Michigan production.

[17] The company's regular outstate rates are applicable throughout the State of Michigan except the City of Detroit. The only difference between the outstate rates and the Detroit rates is that in the domestic portion of the rate schedule there is, as a result of historical developments, a small difference under which a customer in outstate Michigan pays about 60 cents a month more for his domestic service than the Detroit customer. The historical difference is being eliminated with time.

Because the additional revenues to Michigan Wisconsin resulting from its providing a new delivery point at Menominee exceeds all of incremental costs associated with that service, Michigan Wisconsin's over-all system rate of return for that and other reasons shows improvement in each of the years after the commencement of service to Michigan Consolidated at Menominee.

In connection with the additional service, it should be observed that the purchase by Michigan Consolidated of gas for the Upper Peninsula from Michigan Wisconsin is an essential part of the proposal since Michigan Consolidated must be able to take advantage of combined billing under Michigan Wisconsin's tariff to enable it to shift volumes between the Lower Peninsula and the new delivery point at Menominee in the Upper Peninsula. Michigan Consolidated's sale to Hanna Mining Company is also based upon the purchase of gas from Michigan Wisconsin.

The foregoing facts make it abundantly clear that Michigan Wisconsin's proposal to construct the minor facilities required to deliver gas to Michigan Consolidated at Menominee is economically feasible and in the public interest.

The Proposed Project Is Required By Public Convenience And Necessity

The evidence presented by Michigan Consolidated shows that heating consumers in the Upper Peninsula will pay substantially less for equivalent volumes of gas under Michigan Consolidated's rates than is paid by consumers in nearby areas of Wisconsin and Minnesota and in other areas, including parts of the Lower Peninsula of Michigan served by other distributing companies.

Under Michigan Consolidated's rates, gas is by far the least expensive fuel with which to heat a home in the southern part of the Upper Peninsula. An average home would cost $160 per year to heat with gas; $186 per year with stoker coal, or 16 percent higher than gas; $250 per year with hand-fired soft coal, or 56 percent higher than gas; and $253 per year with oil, or 58 percent higher than gas. On the basis of U.S. Census Bureau figures as to present fuel use in the Upper Peninsula, and assuming the conversions to natural gas projected by Michigan Consolidated, Michigan Consolidated estimates that by the fifth year of service the people in the southern portion of the Upper Peninsula who use gas for space heating will be saving approximately $1,700,000 annually as compared with what they would otherwise pay for fuel.

The foregoing advantages do not include the economic benefit to be derived from the construction of over $14,000,000 of new facilities in the area; the property taxes to be paid by Michigan Consolidated, estimated at over $200,000 in the fifth year; the personnel to be employed directly by Michigan Consolidated in the area; or the major influence that the introduction of natural gas can have on how the area grows, redevelops, and helps the industrial climate. Nor do they take account of the fact that Michigan Wisconsin has already constructed facilities to provide service to the Upper Peninsula pursuant to Commission authorization, the costs of which are reflected in Michigan Wisconsin's cost of service to its present customers deriving no benefit therefrom. Putting these facilities to the use for which they were intended will benefit Michigan Wisconsin's customers and the consumers they serve.

The evidence clearly supports the finding that construction and operation of the Michigan Consolidated-Michigan Wisconsin project is required by the public convenience and necessity. Backed by the in-depth resources and strength of Michigan Consolidated, which are of such magnitude as to enable it properly to take care of itself and its customers, the inhabitants of the Upper Peninsula area will now not only be able to enjoy the benefits of natural gas but will be able to tackle some of their problems in new ways and perhaps far more successfully.

FINDINGS

Based on the evidence of record, the briefs and arguments of counsel, as well as the preceding portion of this decision, it is further found and concluded that:

(1) Michigan Wisconsin is a "natural-gas company" within the meaning of the Act and subject to the jurisdiction of the Commission.

(2) By its Section 7(a) application in Docket No. CP65–38, Michigan Consolidated, a present customer of Michigan Wisconsin, requests (a) that Michigan Wisconsin be authorized and directed to extend its existing pipeline facilities a distance of 4.8 miles to provide a supply of gas at a new delivery point near Menominee, Michigan, for resale by Michigan Consolidated in 36 cities, villages and townships in Delta, Iron, Dickinson and Menominee Counties located in the southern part of the Upper Peninsula of Michigan, and (b) that its purchases of gas from Michigan Wisconsin be increased by 10,000 Mcf per day, or to 543,627 Mcf, which would have the effect of increasing its annual contract quantity by 1.9 billion cubic feet, or to 103.3 billion cubic feet.

(3) By its Section 7(c) application in Docket No. CP65–39, as supplemented, Michigan Wisconsin seeks a certificate of public convenience and necessity authorizing the construction and operation of facilities and sale of gas requested by Michigan Consolidated in Docket No. CP65–38 and described in paragraph (2) above.

(4) The facilities of Michigan Wisconsin hereinbefore described, as more fully described in the application in Docket No. CP64–39, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and additional sale of natural gas by Michigan Wisconsin to Michigan Consolidated are subject to the requirements of Subsections (c) and (e) of Section 7 of the Act.

(5) The construction and operation of the proposed facilities and the proposed transportation and additional sale of natural gas by Michigan Wisconsin to Michigan Consolidated are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Michigan Wisconsin is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Act and the requirements, rules and regulations of the Commission thereunder.

(7) Public convenience and necessity does not require that the certificate issued to Michigan Wisconsin be conditioned upon Michigan Consolidated's obtaining a ten-year industrial sales contract with the Hanna Mining Company containing no escape clauses.

(8) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Michigan Wisconsin's compliance with all applicable Commission Regulations under the Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

ORDER

WHEREFORE, *It is ordered*, subject to review by the Commission:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Michigan Wisconsin to construct and operate the proposed facilities and to sell, transport and deliver natural gas as hereinbefore described, all as more fully described in its application, as supplemented, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Michigan Wisconsin's compliance with all applicable Commission Regulations under the Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the sale, transportation and delivery of natural gas authorized in paragraph (A) above shall commence within 8 months from the date on which this order becomes the final act of the Commission.

FRANCIS L. HALL,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. RP65-50

ORDER DENYING PETITION FOR RECONSIDERATION AND WITHDRAWAL AND/OR TERMINATION OF COMMISSION ORDER OF APRIL 2, 1965, AND GRANTING EXTENSION OF TIME

(Issued April 30, 1965)*

Natural Gas Pipeline Company of America filed on April 14, 1965 a response to our order of April 2, 1965, *supra*, p. 666, which instituted an investigation under Section 5 of the Act and a petition for reconsideration and withdrawal and/or termination of that investigation. An answer thereto was filed by staff on April 27, 1965. Natural raises particular objection to the requirement that the company file on or before April 30, 1965 a Cost and Revenue Report prepared in conformity with Section 154.63(f) of the Commission's Regulations.

Natural attacks our authority to require the preparation and submittal of the Cost and Revenue Report alleging that we lack power under the sections of the Act which we cited in our order (Sections 10, 14, 15 and 16) to require such a report. Specifically, Natural states that, as related to information gathering by the Commission, these sections may only be applied generally, and not to individual companies; that reports under these sections may not be used to elicit judgments, opinions, adjustments and estimates; that the Commission's subpoena power is limited to the production of existing documents; and that the burden of proof and the duty of going forward in a Section 5 proceeding may not be shifted by requiring the submittal of such a report.

We find Natural's position to be without merit. We directed the filing of the report under the provisions of Section 10 of the Act and not as an exercise of our subpoena powers in Section 14. There is ample and specific provision in Section 10 authorizing the Commission to require that the Cost and Revenue Report be prepared and submitted by an individual company, such as Natural. *United States* v. *Morton Salt Co.*, 338 U.S. 632. There is nothing in the plain meaning of the section, the legislative history of the Act or in decisions of this Commission or of the courts which would deny this exercise of our authority.

With regard to the objection that Natural is required to exercise its judgment in preparing this report, it is sufficient to say that this is no bar to requiring such a report. Exercise of judgment is fundamental to a report on each of the items set out in Section 10 which Congress clearly gave us the power to require.

The order issued April 2, 1965 did not shift the duty of going forward or the burden of proof in these proceedings. These duties are unaffected by the order and will be the obligation of the appropriate party as in any Section 5 proceeding.

---

*Order issued June 3, 1965, rejecting petition for reconsideration, 33 FPC 1204.

Natural also alleges that it would be physically impossible to prepare the report within the time specified due to other commitments before this Commission and the time required in preparing the report. In view of these allegations, it appears appropriate to extend the time for filing the report to June 1, 1965.

The Commission finds:

There is good cause for extending the time within which Natural must comply with ordering paragraph (B) of our order of April 2, 1965.

The Commission orders:

(A) The time within which Natural must comply with ordering paragraph (B) of the Commission's order of April 2, 1965 is extended to June 1, 1965.

(B) The Petition for Reconsideration and Withdrawal and/or Termination filed by Natural Gas Pipeline Company of America in all other respects is hereby denied.

(C) The order of April 2, 1965 in all other respects shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNITED STATES DEPARTMENT OF THE INTERIOR, SOUTHWESTERN POWER ADMINISTRATION, SAM RAYBURN DAM PROJECT, DOCKET NO. E-7201

ORDER CONFIRMING AND APPROVING RATES FOR SALE OF ELECTRIC POWER AND ENERGY

(Issued April 30, 1965)

The Secretary of the Interior, acting on behalf of the Southwestern Power Administration (SWPA), and pursuant to Section 5 of the Flood Control Act of 1944 (58 Stat. 887), on January 5, 1965, filed with the Federal Power Commission, a request for the confirmation and approval of rates and charges for the sale of the entire power output of the Sam Rayburn Dam Project to the Sam Rayburn Dam Electric Cooperative, Inc., contained in a contract between the Cooperative and SWPA. The rates and charges set forth in the contract are as follows:

Sam Rayburn Dam Electric Cooperative, Inc. (Contract 14-02-001-1124)

(1) Beginning on the first day of the month following the date the first generating unit at the Sam Rayburn Dam is ready for commercial operation, and until the amount of compensation provided under (2) below, becomes due and payable .... $40,000 per month.

(2) Beginning on the first day of the month following the date two generating units at the Sam Rayburn Dam are ready for commercial operation, and thereafter during the term of this contract .... $79,167 per month.

The contract provides that the above rate shall remain in force until July 1, 1970, at which time, and at the end of each succeeding five-year period thereafter, both the energy and compensation shall be reviewed and redetermined subject to confirmation and approval by the Commission.

A companion contract between Sam Rayburn Dam Cooperative, Inc. (Sam Dam Co-op) and Gulf States Utilities Company (Gulf States), provides for the Sam Dam Co-op to deliver the total power output of the Sam Rayburn Dam Project to Gulf States, for which the Account of the Sam Dam Co-op will be credited each month by an amount equal to the total compensation owed by the Sam Dam Co-op to SWPA. Gulf States in turn agrees to deliver an equal amount of energy to four municipalities which are members of Sam Dam Co-op. The municipalities are the City of Jasper, Texas, City of Liberty, Texas, City of Livingston, Texas, and Town of Vinton, Louisiana. Gulf States further agrees to deliver the total power requirements of the three Sam-Dam Member Cooperatives: Sam Houston Electric Cooperative, Jasper-Newton Electric Cooperative, and Southwest Louisiana Electric Membership Corporation. Gulf States will provide the necessary transmission facilities to receive and deliver the power produced at the Sam Rayburn Dam Project.[1]

Along with the request for approval of rates, a repayment study was filed which shows that the anticipated annual revenues of $950,004 will be sufficient to pay all production and marketing costs, including interest charges on the investment allocated to power and amortization of the initial power investment, in the year 2015, or 50 years from the estimated beginning of commercial operation of the generating units.

The Commission finds:

The proposed rates and charges for the sale of the entire power output of the Sam Rayburn Dam Project, as set forth in the contract with the Sam Dam Electric Cooperative, Inc., for a period beginning with the date of initial commercial operation of the Sam Rayburn Dam Project and ending June 30, 1970, will not be inconsistent with the provisions of the Flood Control Act of 1944.

The Commission orders:

The proposed rates and charges for the sale of the entire power output of the Sam Rayburn Dam Project as set forth in the contract with the Sam Dam Electric Cooperative, Inc., all as set forth above, is confirmed and approved for a period beginning with the date of initial commercial operation of the Sam Rayburn Dam Project and terminating June 30, 1970.

---

[1] Gulf States filed its contract with Sam Dam Co-op on February 9, 1965, pursuant to the rate filing requirements of Section 205 of the Federal Power Act.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

GEORGIA POWER COMPANY, PROJECT NO. 2413

ORDER ISSUING A PRELIMINARY PERMIT

(Issued May 3, 1965)

Application was filed on September 27, 1963, by the Georgia Power Company (Applicant) of Atlanta, Georgia for a preliminary permit under Section 4(f) of the Federal Power Act (Act) for proposed Project No. 2413, known as the Laurens Shoals Project. The proposed project would be located on the Oconee River at approximately river mile 173 in the Counties of Putnam, Morgan, Oconee, Oglethorpe, Greene and Hancock, in the State of Georgia and would affect lands of the United States within the Oconee National Forest.

On March 10, 1965, in Opinion No. 454 *infra*, p. 934, this Commission issued a tentative decision providing for issuance of a preliminary permit to the Applicant. No party has filed any exceptions within the specified time and, therefore, in accordance with Opinion No. 454, a preliminary permit for Project No. 2413 is issued to Applicant, effective as of this date.

No construction is authorized under a preliminary permit. Such a permit gives the permittee, during the period of the permit, the right of priority of application for license over other non-Federal entities, while the permittee undertakes the necessary studies and examinations required by Section 9 of the Federal Power Act in order to determine the economic feasibility of the proposed project, the means of securing the necessary financial arrangements for construction, the market for power, and all other information necessary for inclusion in an application for license, should one be applied for under the permit. A license would authorize construction of a project.

The issuance of a preliminary permit for Project No. 2413 as hereinafter provided shall not in any way be construed as precluding the exercise of Commission action contemplated under the provisions of Section 7(b) of the Federal Power Act in the event of an application for license.

The Commission further finds:

(1) The Applicant, Georgia Power Company, is a corporation organized under the laws of the State of Georgia.

(2) The proposed Laurens Shoals Project No. 2413 would be located on the Oconee River in Georgia and would affect lands of the United States within the Oconee National Forest.

(3) The proposed Project No. 2413 would be located in the vicinity of river mile 173 of the Oconee River and would consist of a conventional hydroelectric development, or if feasible would incorporate pumped storage facilities.

(4) The results of studies and investigations by the U.S. Corps of Engineers of the Laurens Shoals site (which have been available to the Applicant) do not include pumped storage facilities.

(5) Contracts for proposed Interstate Highway I-20, which will cross an area which would be inundated by the reservoir of a Laurens Shoals Project, are scheduled to be let in late 1966.

(6) If Interstate Highway I-20 is initially constructed to clear the project maximum pool elevation of 460, instead of elevation 438.5 as now planned, there will be a saving to the project of approximately $450,000.

(7) Public notice of the application has been given as required by the Federal Power Act.

(8) No conflicting application is before the Commission.

(9) The project does not affect any Government dam and no reason is apparent at this time for its development by the United States.

The Commission orders:

(A) This preliminary permit is issued to Georgia Power Company (hereinafter referred to as the Permittee) for a period of 12 months, effective as of May 1, 1965, for the sole purpose of maintaining priority of application for license for Project No. 2413 to be located on the Oconee River in Putnam, Morgan, Oconee, Oglethorpe, Greene and Hancock Counties, Georgia, affecting lands of the United States within the Oconee National Forest, subject to the terms and conditions of the Act, which is incorporated by reference as part of this permit, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) This permit is also subject to the terms and conditions set forth in Form P-1, entitled, "Terms and Conditions of Preliminary Permit" (16 FPC 1303–1305), which terms and conditions designated as Articles 1 through 8, are attached hereto and made a part hereof; and further subject to the following special conditions set forth herein as additional articles:

Article 9. Permittee shall submit at the close of each six-month period from the effective date of this permit to the Regional Engineer, Federal Power Commission, Atlanta, Georgia, having supervision over the project, or to such other officer as the Commission may designate, accurate statements of the work accomplished during the period and of the work contemplated under this permit for the ensuing period.

Article 10. The Permittee shall, during the period of project planning coordinate its studies with the District Engineer, Corps of Engineers, U.S. Army Engineer District, Savannah, Georgia, in developing a plan for the comprehensive development of the water resources of the Oconee River, Georgia, to assure maximum public benefits and shall keep the Georgia State Highway Department informed of progress in developing an application for license for the project.

Article 11. The Permittee shall, during the period of project planning, cooperate with the United States Fish and Wildlife Service and the Georgia Game & Fish Commission for the purpose of planning and designing adequate conservation measures: (1) to prevent loss or damage to existing fish and wildlife resources, (2) to mitigate and compensate for the loss of damage to those resources, and (3) to develop and improve those resources where practicable.

Article 12. The Permittee shall negotiate with the Department of Anthropology, University of Georgia, a contract for an archeological reconnaissance to determine the extent of any salvage which would be required in the area of the project, should it be built, such contract not to exceed an amount of $1,000 to be paid by the Permittee.

Article 13. The Permittee shall, during the period of project planning, consult with the Georgia Department of Public Health in order that adequate consideration can be given to water quality and vector control.

Article 14. The Permittee shall, prior to undertaking any investigation work under this preliminary permit on National Forest lands, consult with the Regional Forester, Forest Service, Department of Agriculture, Atlanta, Georgia, as to reasonable requirements relative to operations, field surveys, and explorations, and shall abide by such requirements; and shall cooperate with the Forest Service during the period of this permit to develop a plan for alleviation of damage to, and achieving maximum utilization of, National Forest resources insofar as they are affected by any proposed project.

Article 15. The Permittee shall, during the early period of project planning, consult with Federal, State, and local agencies having an interest in outdoor recreation on project lands and waters, in the preparation of an "Exhibit R" required for the filing of an application for license pursuant to Section 4.41 of the Commission Regulations under the Federal Power Act.

Article 16. The Permittee shall, for the purpose of assuring the cooperation required by the terms of the permit, designate a liaison officer to act for the Permittee in keeping the several agencies specified in this permit currently informed, and such liaison officer shall communicate with such agencies within 60 days from the date of issuance of this permit.

(C) This order shall supersede the tentative decision issued March 10, 1965, and shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this preliminary permit. In acknowledgment of the acceptance of this preliminary permit, it shall be signed for the Permittee and returned to the Commission within 60 days from the date of issuance of this order.

OPINION NO. 454

GEORGIA POWER COMPANY, PROJECT NO. 2413

TENTATIVE DECISION PROVIDING FOR ISSUANCE OF A PRELIMINARY PERMIT

(Issued March 10, 1965)

Syllabus

1. Under Section 5 of the Federal Power Act Commission may grant preliminary permit to prepare studies, surveys and maps of proposed water power project site. P. 935.
2. *Distinguishing Flint River*, Commission *concludes* issuance of preliminary permit for proposed Laurens Shoals project is in the public interest. PP. 936, 937.
3. Under circumstances of this case no delay of proceedings is warranted. P. 937.
4. Preliminary permit gives right of priority of application for license while permittee undertakes necessary studies required by Section 9 of Power Act—no construction is authorized under permit. P. 937.
5. Project affects no government dams; no reason is apparent at this time for its development by the United States. P. 938.
6. In proceeding under Section 4(f) of the Federal Power Act, Commission *provides* for issuance of preliminary permit for Laurens Shoals project, limiting term thereof to one year.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SWIDLER, *Chairman:*

Application was filed on September 27, 1963, by the Georgia Power Company (Applicant) of Atlanta, Georgia, for a preliminary permit under Section 4(f) of the Federal Power Act (Act) for proposed Project No. 2413, known as the Laurens Shoals Project. The proposed project would be located on the Oconee

River at approximately river mile 173 in the Counties of Putnam, Morgan, Oconee, Oglethorpe, Greene and Hancock, in the State of Georgia and would affect lands of the United States within the Oconee National Forest.

A public hearing was held on November 17, 1964, at Athens, Georgia, in order to give interested persons an opportunity to testify and submit evidence on whether a preliminary permit should be issued to the Applicant and to receive evidence regarding the location and elevation of a proposed highway in the project area and the effect of such location and elevation and the proposed schedule of construction on the economic feasibility of the proposed highway and on the proposed project. In accordance with the Commission's order issued October 20, 1964, the presiding examiner has certified the record to the Commission for the issuance of a tentative decision.

The Office of the Chief of Engineers in its letter of March 6, 1964, stated that a comprehensive plan for developing the water resources of the Altamaha, Oconee and Ocumulgee Rivers, Georgia, was being prepared by the District Engineer, U.S. Army Engineer District, Savannah, Georgia. In this letter, it was further suggested that since this report would soon be available the Commission might wish to defer granting the permit applied for by the Georgia Power Company. Although the report was tentatively scheduled for submission to the Chief of Engineers in December 1964, it has not been submitted as of this date.

The Department of the Interior by its letter of March 4, 1964, requested the Commission to defer action on the application for preliminary permit until the District and Division Engineers' reports of the Corps of Engineers have been completed, and until Congress has had an opportunity to act on the recommendation of the Chief of Engineers.

The Department of Agriculture, in commenting on the application, offered no objection to the granting of a preliminary permit for the project, but suggested certain provisions to be included in any permit issued in order to provide adequate protection and utilization for the National Forest land and resources that would be affected by the project.

Section 5 of the Federal Power Act (16 U.S.C. 798) provides that the Commission may grant a preliminary permit to prepare studies, surveys and maps of a proposed site. Georgia Electric Membership Corporation (Intervenor), an intervenor in this proceeding, states that the applicant has not shown why a study is required and further that our holding in the case of the application of the Georgia Power Company for a preliminary permit for the Flint River Project No. 2303 (27 FPC 663), precludes us from issuing a preliminary permit here. In that case the Corps of Engineers had earlier issued a report by the District and Division Engineers covering the same site for which the application was made recommending that three projects be constructed by the United States as the first phase of a comprehensive plan described in the report. The Commission found that the applicant had not shown that it proposed to make any significant studies not covered in the report of the corps and, in denying the application, concluded that "* * * The studies which the preliminary permit are designed to encourage have thus already been made at public expense and should therefore be available on equal basis to any party who may wish to develop these water resources in the event Federal development is not authorized."

Various studies have been made of the Laurens Shoals site. The earliest study is contained in H.D. No. 68, 74th Congress, First Session which was submitted to Congress in 1934 as the U.S. Corps of Engineers "308 Report". Subsequently, in compliance with the Flood Control Act of 1936, another study of the Oconee River Basin was begun early in 1940 and completed in 1949, but was not submitted to Congress. This study was reactivated in 1959 in compliance with a Senate Resolution adopted in 1954. Although formal reports of these studies and investigations have not been published, they have been completed and the results have been available to the public for some time.

Public Law No. 85-850 of August 28, 1958, established a U.S. Study Commission to study plans for development of land and water resources of the Southeast River Basins. Its report published in 1963 included the Oconee River Basin and a hydroelectric development located at Laurens Shoals which is substantially the same as the one studied by the Corps of Engineers. In making this report, the Study Commission utilized the services, studies, surveys and reports of existing government agencies and did not initiate any original or new basic studies of its own of the Laurens Shoals site.

We believe this case should be distinguished from the *Flint River* case. In the *Flint River* case Applicant did not propose any particular project, but planned to study the same sites for which the Corps studies were then available. In the present case Applicant proposes to study a specific hydroelectric project consisting of either an earth fill or concrete gravity type dam with a semi-outdoor type powerhouse. The installed capacity of the proposed project would be about 150,000 kw as a conventional hydroelectric plant or a total of about 400,000 kw if pumped storage were incorporated. Review of the studies already in existence show that they are substantially different from that proposed by the Applicant in such respects as difference in installed conventional capacity, powerhouse design, type of dam, and the possible incorporation of pumped storage capacity. In regard to incorporation of pumped storage, further geological exploration would be required to determine whether it is more economical to excavate the tailrace area from Applicant's downstream Sinclair Reservoir to the proposed site or move the dam site downstream and thus avoid extensive tailrace facilities. These differences, particularly insofar as the possibility of pumped storage is concerned, tend to support the need for additional study.

There are two other significant factors here that were not presented in the *Flint River* case. First, in that case the Engineers' report already published called for Federal development. Noting our obligations under Section 7(b) of the Act not to approve any application for a project where the Commission considers that Federal development should be undertaken and the fact that in commenting on the Chief of Engineers' report to Congress we might soon be required to consider the question of such development, we did not deem it appropriate to grant the preliminary permit. In the present case the recent report of the U.S. Study Commission recommends non-Federal development. We have no indication of what the Engineers' new recommendation will be, since its report is not yet available. However, we note that the 1934 study and report to Congress recommended that the United States not participate in the problems of irrigation, flood control, or power development in this location. Second, applicants for project licenses are now required to submit extensive recreation plans as a part of a license application. There was no such requirement in 1962 when the Flint River project was considered. These plans require coordinated planing for recreation with local, state and Federal agencies. Applicant contends and we agree that issuance of a preliminary permit will allow more effective cooperation and planning with the interested agencies.

Another factor is the necessity for coordinating plans for the project with the construction of proposed Interstate Highway I-20. This highway will cross the Oconee River and areas of Morgan and Greene Counties and, if constructed at the planned elevation, would be inundated by the proposed project. Testimony in the record indicates that if the project is authorized before contracts are let on the highway close to one-half million dollars could be saved by elevating the highway during construction. Rebuilding it later would cost about $1 million. Since it is anticipated that contracts will be let about the end of 1966, it is clear that time is an important element and that an early resolution of whether the proposed project will be built could result in a substantial saving in cost.

On the basis of the foregoing we conclude that issuance of a preliminary permit to the Applicant for the proposed Laurens Shoals project is in the public interest.

We are mindful of the requests that we delay our decision in this case pending publication of the District Engineer's report and until Congress has had an opportunity to act on the recommendations of the Chief of Engineers. The Applicant is aware of the pending report of the District Engineer and also that a preliminary permit does not give it priority over the Corps should Federal development be recommended and acted upon favorably by the Congress. Under these circumstances and considering the benefits which will inure to the ultimate ratepayers through lower costs if the project is coordinated with the building of the highway, we do not believe any delay in this proceeding is warranted.

Applicant originally requested a preliminary permit for a period of 36 months, but later stated that it would accept a permit limited to 18 months. Staff recommends that the term of the permit be limited to one year. Because of the urgency for the early filing of an application for license due to the timing of the highway program in the State of Georgia and in order to allow adequate time for consideration of an application for a license, if one is filed, we agree that the term of the permit should be limited to one year and so order. If it should appear at the end of this period that additional time is necessary to complete the proposed studies we will consider a motion for the extension of the permit at that time.

No construction is authorized under a preliminary permit. Such a permit gives the permittee, during the period of the permit, the right of priority of application for license while the permittee undertakes the necessary studies and examinations required by Section 9 of the Federal Power Act in order to determine the economic feasibility of the proposed project, the means of securing the necessary financial arrangements for construction, the market for power, and all other information necessary for inclusion in an application for license, should one be applied for under the permit. A license would authorize construction of a project.

The issuance of a preliminary permit for Project No. 2413 as hereinafter provided shall not in any way be construed as precluding the exercise of Commission action contemplated under the provisions of Section 7(b) of the Federal Power Act in the event of an application for license.

The Commission further finds:

(1) The applicant, Georgia Power Company, is a corporation organized under the laws of the State of Georgia.

(2) The proposed Laurens Shoals Project No. 2413 would be located on the Oconee River in Georgia and would affect lands of the United States within the Oconee National Forest.

(3) The proposed Project No. 2413 would be located in the vicinity of river mile 173 of the Oconee River and would consist of a conventional hydroelectric development, or if feasible would incorporate pumped storage facilities.

(4) The results of studies and investigations by the U.S. Corps of Engineers of the Laurens Shoals site (which have been available to the Applicant) do not include pumped storage facilities.

(5) Contracts for proposed Interstate Highway I–20, which will cross an area which would be inundated by the reservoir of a Laurens Shoals Project, are scheduled to be let in late 1966.

(6) If Interstate Highway I–20 is initially constructed to clear the project maximum pool elevation of 460, instead of elevation 438.5 as now planned, there will be a saving to the project of approximately $450,000.

(7) Public notice of the application has been given as required by the Federal Power Act.

(8) No conflicting application is before the Commission.

(9) The project does not affect any Government dam and no reason is apparent at this time for its development by the United States.

The Commission orders:

(A) This preliminary permit is issued to Georgia Power Company (hereinafter referred to as the Permittee) for a period of 12 months, effective as of the date of the final order in this case, for the sole purpose of maintaining priority of application for license for Project No. 2413 to be located on the Oconee River in Putnam, Morgan, Oconee, Oglethorpe, Greene and Hancock Counties, Georgia, affecting lands of the United States within the Oconee National Forest, subject to the terms and conditions of the Act, which is incorporated by reference as part of this permit, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) This permit is also subject to the terms and conditions set forth in Form P–1, entitled, "Terms and Conditions of Preliminary Permit" (16 FPC 1303–1305), which terms and conditions designated as Articles 1 through 8, are attached hereto and made a part hereof; and further subject to the following special conditions set forth herein as additional articles:

Article 9. The Permittee shall submit at the close of each six-month period from the effective date of this permit to the Regional Engineer, Federal Power Commission, Atlanta, Georgia, having supervision over the project, or to such other officer as the Commission may designate, accurate statements of the work accomplished during the period and of the work contemplated under this permit for the ensuing period.

Article 10. The Permittee shall, during the period of project planning coordinate its studies with the District Engineer, Corps of Engineers, U.S. Army Engineer District, Savannah, Georgia, in developing a plan for the comprehensive development of the water resources of the Oconee River, Georgia, to assure maximum public benefits and shall keep the Georgia State Highway Department informed of progress in developing an application for license for the project.

Article 11. The Permittee shall, during the period of project planning, cooperate with the United States Fish and Wildlife Service and the Georgia Game & Fish Commission for the purpose of planning and designing adequate conservation measures: (1) to prevent loss or damage to existing fish and wildlife resources, (2) to mitigate and compensate for the loss of damage to those resources, and (3) to develop and improve those resources where practicable.

Article 12. The Permittee shall negotiate with the Department of Anthropology, University of Georgia, a contract for an archeological reconnaissance to determine the extent of any salvage which would be required in the area of the project, should it be built, such contract not to exceed an amount of $1,000 to be paid by the Permittee.

Article 13. The Permittee shall, during the period of project planning, consult with the Georgia Department of Public Health in order that adequate consideration can be given to water quality and vector control.

Article 14. The Permittee shall, prior to undertaking any investigation work under this preliminary permit on National Forest lands, consult with the Regional Forester, Forest Service, Department of Agriculture, Atlanta, Georgia, as to reasonable requirements relative to operations, field surveys, and explorations, and shall abide by such requirements; and shall cooperate with the Forest Service during the period of this permit to develop a plan for alleviation of damage to, and achieving maximum utilization of, National Forest resources insofar as they are affected by any proposed project.

Article 15. The Permittee shall, during the early period of project planning, consult with Federal, State, and local agencies having an interest in outdoor recreation on project lands and waters, in the preparation of an "Exhibit R" required for the filing of an application for license pursuant to Section 4.41 of the Commission regulations under the Federal Power Act.

Article 16. The Permittee shall, for the purpose of assuring the cooperation required by the terms of the permit, designate a liaison officer to act for the Permittee in keeping the several agencies specified in this permit currently informed, and such liaison officer shall communicate with such agencies within 60 days from the date of issuance of this permit.

(C) This order is subject to review by the Commission on appeal as provided by the Commission's Rules of Practice and Procedure, particularly Sections 1.30 and 1.31 thereof. Briefs on exception may be filed with the Commission within 30 days from the date of this order and briefs opposing exemption within 20 days thereafter.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

INTERSTATE POWER COMPANY, DOCKET NO. E-7213

ORDER AUTHORIZING ISSUANCE OF FIRST MORTGAGE BONDS, PREFERRED STOCK AND COMMON STOCK

(Issued May 3, 1965)

Interstate Power Company (Applicant), incorporated under the laws of the State of Delaware and qualified to do business in the States of Illinois, Iowa, Minnesota and South Dakota, with its principal business office in Dubuque, Iowa, filed an application on March 18, 1965, pursuant to Section 204 of the Federal Power Act, authorizing the issuance and sale at competitive bidding of $14,000,000 principal amount of First Mortgage Bonds, due 1995, 166,000 shares of its authorized but unissued Preferred Stock of the par value of $50 per share, and 200,498 shares of additional Common Stock of the par value of $3.50 per share.

Applicant proposes to issue the Bonds under its Indenture of Mortgage dated as of January 1, 1948, to the Chase Manhattan Bank and Arthur F. Henning (Successor) Trustees, as heretofore supplemented and as to be further supplemented by a proposed Tenth Supplemental Indenture to be dated as of May 1, 1965.

According to the application, Applicant proposes to issue 166,000 shares of its authorized but unissued Preferred Stock of the par value of $50 per share. The dividend rate is proposed to be determined pursuant to competitive bidding on or about May 19, 1965 and to be sold in accordance with the requirements of Section 34.1a(b) of the Commission's Regulations.

Applicant also proposes initially to offer for subscription by its Common Stockholders under a Primary Subscription Right, 178,598 additional shares of Common Stock on the basis of an additional share for each 20 shares held of record; in addition, where holdings are not evenly divisible by 20 or are less than 20, Warrant holders will have the Incidental Right to subscribe for one full share with the number of rights which exceed a multiple of 20 or less than 20. The 21,900 additional shares included in the maximum amount of 200,498 shares will be issued only to the extent, if any, that it is necessary to issue more than 178,598 shares by reason of the exercise of Incidental Rights to satisfy Primary Subscription Rights.

The price at which the Common Stock is to be offered to Common Stockholders will be determined by the Board of Directors of Applicant shortly before the proposed offering date, which price is to be fixed in relation to and at appropriate discount from the then market price on Applicant's presently issued and outstanding Common Stock.

On or about May 7, 1965, Applicant proposes to invite sealed, written bids for the purchase of the Bonds, the additional shares of Preferred Stock and any Unsubscribed Common Stock by newspaper publication and by distribution of public invitations for bids. Copies of the terms and conditions relating to the bids will be made available by the Applicant. All bids, whether from a single bidder or a group of bidders, are to be in writing and on the forms of bid furnished by Applicant and are to be for the purchase of the entire issue of Bonds, Preferred Stock or Unsubscribed shares of Common Stock. Each bid on the Bonds is to specify, among other things, (1) the coupon rate of the Bonds, which is to be a multiple of ⅛ of 1%; (2) the price exclusive of accrued interest, to be paid to the Applicant for the Bonds, which price shall not be less than 99% and not more than 102¾% of the principal amount thereof; and (3) shall provide that accrued interest from May 1, 1965 to the date of payment and delivery will be paid to the Applicant by the purchaser or purchasers. Each bid on the Preferred Stock is to specify, among other things, (1) the dividend rate which shall be a multiple of 1/25 of 1%; (2) and the price to be paid to the Applicant, which price shall not be less than $50 nor more than $51.38 per share. Each bid on the Unsubscribed Common Stock is to specify, among other things, (1) the price per share to be paid to the Applicant for the Unsubscribed Common Stock and (2) the aggregate amount to be paid by the Applicant to the bidder or bidders as compensation for their commitments and obligations in connection with the purchase of the Unsubscribed Common Stock.

Unless postponed, all bids for the purchase of the proposed issuance of Bonds, Preferred Stock and Unsubscribed Common Stock are to be delivered to Applicant at the office of The Chase Manhattan Bank, Room 2414, One Chase Manhattan Plaza, New York, New York, on May 18, 1965 at 3:45 p.m., New York time, for the Common Stock bids, and on May 19, 1965 before 11:00 a.m. for the Bonds and 12:00 Noon for the Preferred Stock, New York time. The terms and conditions relating to the bids provide that the Applicant may return or reject all bids on the Bonds, Preferred Stock or Unsubscribed Common Stock or may exclude individual bids for certain specified reasons. Of those bids not so rejected or excluded, Applicant will accept that bid for the Bonds which provides the lowest cost of money, and that bid for the Preferred Stock which provides for the lowest cost of money and that bid for the Unsubscribed Common Stock which specifies the lowest aggregate amount of compensation to be paid by the Applicant to the bidder or bidders.

Each bid for the Bonds must be accompanied by a certified or official bank check or checks for $420,000, and each bid for the Preferred Stock must be accompanied by a certified or official bank check or checks for $249,000. Each bid for the Unsubscribed Common Stock must be accompanied by a certified or official bank check or checks in the aggregate amount of $50,000.

The Applicant expects to receive net proceeds of about $13,911,200 from the $14,000,000 principal amount of new Bonds; net proceeds of about $8,254,500 from the 166,000 shares of new Preferred Stock; and net proceeds of about $4,843,600 from the additional shares of Common Stock; or total net proceeds of about $27,009,300 from all the new securities. The total net proceeds will be used to discharge $6,800,000 short-term notes, to redeem 80,000 shares of 5½% series Preferred Stock at the cost of about $4,309,000 and the balance of about $15,900,000 will be applied to payment of Applicant's 1965 construction program which has an estimated cost of about $20,990,000, including approximately $10,000,000 for construction of Unit No. 2 at the Applicant's Milton L. Kapp substation at Clinton, Iowa, $4,000,000 for transmission line construction, including $756,000 for 55 miles of Applicant's portion of the Twin Cities-St. Louis 345 kv line, and some $6.9 million for construction of other miscellaneous items, most of which is for electric and gas distribution facilities.

Written notice of the application has been given to the Commerce Commission of Illinois, the Minnesota Railroad and Warehouse Commission, the South Dakota Public Utilities Commission, and the State Commerce Commission of Iowa. Notice has also been given by publication in the Federal Register on April 1, 1965 (30 F.R. 4266), stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest on or before April 15, 1965, with the Federal Power Commission, Washington, D.C., 20426. No protest, petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission, as heretofore described and set forth in the Commission's order issued May 12, 1959, *In the Matter of Interstate Power Company*, Docket No. E-6877 (21 FPC 678).

(2) The proposed issuance and sale of Bonds, Preferred Stock and Common Stock, as described above, will constitute an issuance of securities within the purview of Section 204 of the Federal Power Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issues here involved are regulated by a State Commission within the meaning of Section 204(f) of the Act, and the proposed issuance of securities are, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(4) The proposed issuance and sale of Bonds, Preferred Stock, and Common Stock, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

The Commission orders:

(A) The proposed issuance and sale of Bonds, Preferred Stock and Common Stock, upon the terms and conditions and for the purposes specified in the application, as described above, are authorized, subject to the provisions of this order.

(B) The proposed issuance and sale of Bonds and Preferred Stock at competitive bidding, and the proposed issuance and sale of Common Stock in the manner set forth in the application shall not be consummated until:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section

34.2(h)(1) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.

(ii) The Commission, by further order, shall have approved the price to be received by Applicant for the proposed issuance of Bonds and the interest rate thereof, the price to be received by Applicant for the proposed issuance of Preferred Stock and the dividend rate thereon, the price per share to be received by Applicant for the Common Stock and the amount of any compensation for underwriters to be paid by Applicant in connection with the Common Stock.

(C) This authorization shall expire unless the transactions hereby authorized are consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission.

(E) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any securities to which this order relates.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NEVADA IRRIGATION DISTRICT, PROJECT NO. 338

ORDER ACCEPTING SURRENDER OF LICENSE

(Issued May 3, 1965)

Application was filed on February 17, 1965, by Nevada Irrigation District (Applicant) for surrender of its minor-part license for Project No. 338 located on Yuba and Bear Rivers, California.

The application was filed pursuant to paragraph (D) of the Commission's order of June 24, 1963 issuing a license to Applicant for Project No. 2266, effective as of May 1, 1963, and which placed under the license for the latter project all of the project works comprising Project No. 338 (29 FPC 1256).

Notice of the application to include the project works of Project No. 338 as part of the project works for Project No. 2266 was published November 24, 1960 (25 F.R. 11192).

The Commission orders:

Surrender of the minor-part license for Project No. 338 is hereby accepted, effective as of April 30, 1963.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NORTHERN STATES POWER COMPANY (MINNESOTA), DOCKET NO. E-7202

ORDER AUTHORIZING ACQUISITION, MERGER OR CONSOLIDATION OF FACILITIES

(Issued May 3, 1965)

Northern States Power Company (Applicant) filed an application on January 18, 1965, with the Federal Power Commission pursuant to Section 203 of the

Federal Power Act, seeking an order authorizing it to acquire certain electric distribution facilities of Nodak Rural Electric Cooperative, Inc. (NODAK), a North Dakota electric cooperative association with its principal business office at Grand Forks, North Dakota, and to consolidate and merge such distribution facilities with those of Applicant.

Applicant, a corporation organized under the laws of the State of Minnesota with its principal business office at Minneapolis, Minnesota, owns and operates utility properties and furnishes electric service at retail in 426 communities and adjacent territories and electric energy at wholesale for resale in 31 additional communities and at wholesale to rural electric cooperative associations and other utility companies. Of the 457 communities so served, 404 are located in Minnesota, 18 in North Dakota and 35 in South Dakota. The main interconnected electric production, transmission and distribution system of Applicant in central and southern Minnesota and southeastern South Dakota is interconnected with the interconnected electric system of its only utility subsidiary, Northern States Power Company, a Wisconsin corporation.

NODAK owns and operates a cooperative distribution system serving rural areas in the northeastern part of North Dakota. It maintains two small mobile generating units (430 kw) for standby purposes only and purchases energy to meet its requirements from Minnkota Power Cooperative, a "Generation and Transmission" cooperative which supplies energy to 12 member distribution cooperatives. At the end of 1963 NODAK was serving 9,034 ultimate consumers to which it supplied 100,847,011 kwh during the year.

Applicant requests authority to acquire by purchase from NODAK the portion of electric distribution facilities now owned by NODAK that are located in the area which was annexed to the north city limits of the City of Grand Forks, North Dakota on March 2, 1964. According to the application, the portion of NODAK's electric distribution facilities that Applicant is acquiring consists of approximately 5,300 feet of 7.3 kv electric distribution lines and includes 42 poles, 23 transformers, 21 meters and other related equipment and appurtenances.

Applicant represents that pursuant to an Agreement dated December 19, 1964, between Applicant and NODAK, it has agreed to pay $79,412 as consideration for the transfer of these facilities. According to the application, the facilities to be acquired by the Applicant from NODAK have a total original cost of $30,411, an applicable accumulated provision for depreciation of $8,688, and an original cost depreciation of $21,723. This will result in an acquisition adjustment of $57,689 which adjustment will be charged to unappropriated earned surplus.

Applicant represents that the amount of consideration was arrived at through negotiations of representatives of Applicant and NODAK as being fair value of the properties involved, giving weight, among other things, to the fact that Applicant is now furnishing electric energy in the City of Grand Forks and to the present and potential earning power of the properties being acquired. According to the application, there will be no change in the use of these facilities after their acquisition by Applicant which will undertake all duties and legal obligations with respect to such facilities and their operation.

Applicant states that upon the consummation of the transaction described above, the electric distribution facilities to be acquired by Applicant from NODAK will be integrated into Applicant's system, and the services of Applicant's organization will be available to the acquired customers. Applicant further states that no change in rates is contemplated for a year or two as NODAK's commercial and industrial rates are generally lower than Applicant's in this area. However, where a lower bill would obtain by applying any applicable rate of Applicant now in effect, Applicant proposes to permit customers to elect to have such rate applied.

According to the application, Applicant desires to acquire the afore-described distribution facilities which are located within the new corporate limits of the City of Grand Forks because it believes that its sales and engineering services are more closely geared to the needs of the commercial and industrial customers than would be the services of NODAK which are geared primarily to rural needs.

Applicant represents that it is equipped to advance the urban development of the area through its industrial personnel and to give the area promotional assistance. According to the Applicant the acquisition will eliminate future uneconomic duplication of facilities, duplicate crossovers, and maintenance conflicts.

Written notice of the application has been given to the Minnesota Railroad and Warehouse Commission, the North Dakota Public Service Commission, and the South Dakota Public Utilities Commission and to the Governor of each of those States. Notice has also been given by publication in the Federal Register on February 3, 1965 (30 F.R. 1135), stating that any person desiring to be heard or to make any protest with reference to the application, shall file petitions or protests on or before February 24, 1965, with the Federal Power Commission, Washington, D.C., 20426. No protest, petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued February 27, 1964, *Northern States Power Company*, Docket No. E-7145 (31 FPC 464).

(2) By the proposed transaction, Applicant will merge or consolidate its facilities subject to the jurisdiction of the Commission with those of NODAK, another person, within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed acquisition of facilities by Applicant, as described above, upon the terms and conditions set forth in the application, and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

The Commission orders:

(A) The proposed acquisition by Applicant of the aforementioned electric facilities, all as described above, is authorized and approved upon the terms and conditions and for the purposes set forth in the application subject to the provisions of this order.

(B) Applicant shall record the proposed transaction herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) This authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted by this Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP65-178

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 4, 1965)

On December 18, 1964, El Paso Natural Gas Company (Applicant) filed in Docket No. CP65-178 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application on file with the Commission.

Applicant proposes to construct and operate (1) approximately 10.3 miles of 6⅝-inch O.D. pipeline, and necessary appurtenances, extending from a point of connection with Applicant's 20-inch O.D. Northwest Division Spokane lateral pipeline in an easterly direction to a point of termination in the immediate vicinity of the Phillips Pacific Chemical Company (Phillips Pacific) ammonia plant, all in Benton County, Washington, such proposed pipeline looping the present sales lateral providing service to Phillips Pacific; and (2) piping and pressure regulator modification to the existing Phillips Pacific Meter Station located at the terminus of the pipeline described above.

The proposed facilities are for the purpose of delivering additional volumes of natural gas to Phillips Pacific so as to increase the deliveries on a firm basis from 100,000 therms per day to 160,000 therms per day at 3.6 cents per therm. This is the same rate that is applicable to the volume presently being delivered. The agreement dated October 29, 1964, between the parties retains the provision as to the sale and delivery of up to 40,000 therms per day on an interruptible basis at 3.4 cents per therm. However, Phillips Pacific may by six (6) months advance written notice convert this interruptible service to firm service in increments of 10,000 therms or multiples thereof and accordingly increase the Maximum Daily Quantity to reflect any such conversion.

Estimated third year additional requirements for the expanded Phillips Pacific plant are 59,996 therms and 15,355,001 therms equating to 5,660 Mcf and 1,448,585 Mcf, respectively, of 1,060 Btu gas peak day and annual firm sales, respectively.

The total estimated cost of Applicant's proposed construction is $273,000, and will be financed with current working funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 29, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record, concludes that authorization of this proposal is in the public interest.

In keeping with our recent policy when certificating interruptible or direct industrial sales we are including conditions in ordering paragraphs (D) and (E) which make clear that interruptible volumes may be curtailed to meet the present or future requirements of firm customers and that certification of firm volumes does not necessarily give the customer priority over resale customers in obtaining additional increments of firm service in the future. While these conditions have been included in a number of authorizations, we have not previously explained the reasons for imposing the conditions. To prevent any misinterpretation of these conditions we believe that it is desirable to explain them in some detail in this proceeding.

The need for imposing these conditions arose from the reversal by the Court of Appeals of our Opinion No. 355, 27 FPC 697, reversed, *Granite City Steel Co. v. F.P.C.*, 320 F. 2d 711 (CADC-1963), wherein we attempted to reallocate interruptible industrial sales of gas to firm resale customers. The Court held that where interruptible industrial customers had come to expect to receive gas without substantial interruption they were entitled to continue to receive gas on the same basis regardless of their contract provisions or the pipeline's rate structure. In addition the Court spoke not only of meeting such industrial customers' present requirements in preference to persons desiring gas for the first time or more gas, it also spoke of a preference for such industrial customers in having "reasonably foreseeable" requirements met.

These holdings indicate that any condition with respect to rights or priorities to present or future service should be made clear at the time of certification to prevent pipelines and their customers from assuming that a proposed service will be under conditions not contemplated by the Commission at the time of certification.

The dissent to the inclusion of these conditions in this proceeding argues that the conditions place an unfair limitation on industrial use of gas. We do not agree with this interpretation.

The condition in ordering paragraph (D) applies to all interruptible customers, whether industrial or resale.[1] Its only effect is to make clear that a customer paying for interruptible service at substantially lower rates cannot later claim a right to capacity in the line for which he has not paid. Often new facilities are constructed in excess of firm requirements during the first few years of service in contemplation of increasing firm service as the market grows. It is only logical that such excess capacity be used to provide interruptible service until it is required by firm customers willing to pay for it. The use of such excess capacity during its early years by an interruptible customer should not be on the basis of a claim by the interruptible customer that his service is being impaired when the capacity is finally dedicated to a firm customer.

Thus it should be understood that ordering paragraph (D) goes only to the rights of firm customers, industrial or resale, as opposed to interruptible customers of any type. The condition in no way discriminates between industrial and resale customers nor does it limit the sale of gas to industrial customers. It simply insures that "interruptible" will in fact have its purported meaning in a pipeline rate structure.

The Court's language in the *Granite City* case, *supra*, could be interpreted to mean that an existing industrial customer seeking additional firm gas to meet his "reasonably foreseeable" needs should be given a priority to additional gas over the needs of a resale customer seeking additional firm service to enable him to attach new homes or other types of customers. The inclusion of ordering paragraph (E) is for the purpose of assuring that when several customers are seeking new or additional firm service the criterion for allocating the additional gas will be the overall public interest. The condition does not affect firm industrial service already authorized. It does not give a priority to resale customers. It may well be that economic conditions in an area or load factor conditions would dictate that an industrial sale should have priority over resale sales. That will be decided on the basis of the facts controlling at the time additional firm service is sought.

---

[1] El Paso Natural Gas Co., Docket No. CP65-82, 32 FPC 1468, issued December 17, 1964.

We conclude that these conditions are reasonable and desirable and should be included in all authorizations involving interruptible or direct industrial sales.

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 11, 1944, in Docket No. G-288 (4 FPC 486).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefore should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provision of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is hereby issued authorizing Applicant, El Paso Natural Gas Company, to construct and operate the proposed facilities, and to deliver natural gas as hereinbefore described, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 6 months from the date on which this order issues.

(D) The certificate issued hereby is granted on the express condition that the interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

(E) This certificate shall not entitle the industrial customer to whom firm deliveries are authorized herein to any priorities to additional gas for meeting any future increases in its requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

Commissioner O'Connor *dissenting in part.*

O'CONNOR, *Commissioner, dissenting in part:*

The statutory authority under which this Commission functions is specific in prohibiting the disruption of a transmission company's "ability to render adequate service to its customers." Section 7(a), Natural Gas Act. The condition imposed in ordering paragraph (D) attempts to circumvent this prohibition by converting interruptible sales into contingent sales. Such broad use of certificate authority is totally unwarranted. Not only are controls imposed where no authority lies; but also it is an unjustified attempt to prohibit direct industrial sales.

This condition represents the final step in a series of attempts to reverse certain implications of *Granite City Steel Co.* v. *F.P.C.*, 320 F. 2d 711 (CADC-1963), where the Court stated, at 713, with respect to Section 7(a):

> The theory and purpose of the statutory restriction appear to be that persons desiring gas for the first time, or desiring more gas, should not get it by taking it away from existing lawful customers.

It is clear that direct industrial purchasers are lawful customers of an interstate pipeline despite their being exempted from the Commission's jurisdiction. Thus, when natural gas service is allocated to their purposes, it cannot be disturbed. This much must be conceded; nevertheless, the attempt of the condition is to subject all interruptible sales to the contingency of complete and permanent curtailment upon the wishes of a firm customer.

In order to preserve all pipeline capacity for firm customers, the premise upon which my colleagues act is apparently that of the certificating authority under Section 7(e). That authority has been broadly defined to require the Commission to evaluate all factors bearing on the public interest. However, the multifarious and competing policy considerations that compose the public interest must always be subordinated to the clear command of a legislative mandate. Effect must be given to a statute in its entirety, and to every clause and word thereof, rather than to emasculate an entire section. Therefore, despite the broad standard of Section 7(e), it cannot be exercised in contravention to the clear command of Section 7(a). The latter section not only protects past service; it also necessarily includes the right to obtain future service. It is my opinion, therefore, that should a direct industrial sale be severed pursuant to the proposed condition, it would not be legally supportable. On the other hand, it is clear that all the legal authority needed by this Commission is contained in its power to interpret and enforce the contractual conditions defining the sales proposed herein. Clearly, the interruptible sales are subject to curtailment for emergency needs of utility customers. Otherwise, an industrial customer's rights in the pipeline's capacity should be left to allotments by the company as the economic needs of its service area may dictate.

The circumstances of the natural gas industry do not, in the least, require that interruptible sales be contingent in the manner contemplated by paragraph (D).

Natural gas is utilized primarily for space heating in residences across the country. As such, deliveries are required primarily in the colder months. Unless there are customers for substantial amounts during the summer months, and during periods of unseasonably warm weather, the costs of gas to consumers would be prohibitive simply because no pipeline could be so planned as to operate only during the coldest days of a year, lying idle for the remainder. Industrial customers, utilizing gas for a multitude of worthwhile purposes, serve as a base capacity for the transmission company, enabling it to operate year-round and supplying it with needed revenues that redound to the benefit of all consumers. However, the rationale supporting paragraph (D) is in direct contravention to these circumstances under which the natural gas industry must necessarily operate. Paragraph (D) may have relevance to restrict certain end uses, but it is totally inapposite as a condition for insertion in all certificates for direct industrial sales. Furthermore, a fundamental policy consideration is completely overturned by the ordering paragraph. It is axiomatic that controls by government are not to be imposed in the absence of a compelling public interest. Fiat is not condoned. The national economy bears a traditional relation to the federal government that the former will not be disturbed unless there is a clear showing of a substantial adverse impact upon the public interest. There has been no such showing. Every circumstance surrounding the industrial use of natural gas calls, not for more regulation, but for more encouragement. The fact that interruptible service may operate as firm service through most of the year does not in the least detract from the year-round benefits accorded by such sales. The fact that such service may be at lower rates merely reflects, not only the benefits to the pipeline of continuity of operation, but also the free bargaining that is accorded such sales. This is particularly relevant in view of the increasingly effective competition that confronts natural gas from other energy sources.

The determination to unsettle and render asunder all present and future interruptible service is made clear by the circumstances of this particular order. The proposed departures reach back in time and disturb the vested rights of an existing lawful customer. The applicant has come before the Commission for an amendment to a previous certificate which did not subject the sale to the proposed contingency. Disturbing the prior rights acquired by the parties is entirely unsupportable. The least that should be done would be to condition only the requested increases; however, this is impossible. Applicant has requested no increases of previously authorized sales. A limited assertion of authority does not suffice; it is required that a retroactive condition be ordered in the hope that, should the contingency occur, an attempt could be made to eliminate the interruptible service of a non-jurisdictional customer. The extreme condition thus proposed is totally unwarranted.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP65-252

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 4, 1965)

On February 23, 1965, El Paso Natural Gas Company (Applicant), filed in Docket No. CP65-252 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing (1) the construction and operation of a measuring station at a point adjacent to its California mainline system in Maricopa County, Arizona, (2) the acquisition and operation of a 4.85-mile segment of 23.0 miles of 6⅝-inch pipeline to be constructed by Arizona Public Service Company (Public Service), the segment extending from Applicant's proposed measuring station in a southerly direction, and (3) the sale and delivery of natural gas to Public Service for initial resale and distribution in the Palomas Plains area, Maricopa and Yuma Counties, Arizona, all as more fully set forth in the application.

Applicant and Public Service propose to initiate the sale and delivery of natural gas in the Palomas Plains area of Maricopa and Yuma Counties, Arizona, for the development of a new irrigation project to reclaim desert land through the use of gas operated irrigation wells. The estimated third-year peak-day and annual sales are 4,942 Mcf [1] and 823,600 Mcf [1], respectively.

The estimated cost of Applicant's proposed facilities, constructed and acquired, will be $100,000 to be financed out of current working funds.

After due notice no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 29, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 29, 1942, in Docket Nos. G–242 and G–257 (3 FPC 851).

(2) The proposed acquisition of facilities from Public Service, the construction and operation of facilities, and sale of natural gas in interstate commerce, as hereinbefore described, and as more fully described in the application and exhibits in this proceeding are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed acquisition of facilities, construction and operation of facilities, and sale of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon El Paso's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), (d)(2), (d)(3) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to the Applicant, El Paso Natural Gas Company, in this proceeding authorizing the construction and operation of facilities, the acquisition and operation of facilities and sale and delivery of natural gas to Arizona Public Service Company, all as more fully described in the application and exhibits herein, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), (d)(2), (d)(3) and (e) of Section 157.20 of such Regulations.

---

[1] Peak day will occur during summer months; and third year annual firm and interruptible volumes are 124,957 Mcf and 698,643 Mcf, respectively.

(C) The facilities hereby authorized to be constructed and operated by Applicant shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within six months of the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP65-281

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT

(Issued May 4, 1965)

On March 11, 1965, El Paso Natural Gas Company (Applicant) filed in Docket No. CP65-281, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon its Brickland Meter Station in Dona Ana County, New Mexico, and its Prewitt Meter Station in McKinley County, New Mexico, all as more fully set forth in the application.

The facilities proposed to be abandoned have heretofore been used in connection with the transportation and delivery of natural gas on a direct basis to the El Paso Natural Gas Products Company (Products Company) for use in Products Company's Brickland and Prewitt Refineries. The Products Company has discontinued operations at its Brickland and Prewitt Refineries, and therefore, the Brickland and Prewitt Meter Stations are no longer required. Applicant will salvage and return usable materials to stock.

The book cost of the facilities to be abandoned is $7,771 and the book cost of that portion of the facilities that are nonsalvable is $2,160, resulting in a net value for salvable material of $5,611. The estimated cost of removing and reconditioning such facilities is $1,700.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 29, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 29, 1942, in Docket No. G-242 (3 FPC 85).

(2) The facilities proposed to be abandoned, as hereinbefore described and as more fully described in the application herein, are used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and approval thereof should be granted as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment of the facilities hereinbefore described, as more fully described in the application in this proceeding, are hereby granted to Applicant.

(B) Applicant shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (A) above within ten days of such abandonment.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

GAS TRANSPORT, INC., DOCKET NO. CP65-273

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 4, 1965)

On March 8, 1965, Gas Transport, Inc. (Applicant), filed in Docket No. CP65-273 an application as supplemented on March 19, 1965, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and the transportation of natural gas in interstate commerce, all as more fully set forth in the application on file with the Commission.

Applicant proposes to construct and operate approximately 18,000 feet of 3-inch pipeline extending from Grant District, Jackson County, West Virginia, to an existing 6-inch pipeline in the same district, together with a measuring station.

The proposed construction of facilities is required in order to enable Applicant to obtain and transport an additional quantity of approximately 350 Mcf of natural gas per day from existing wells drilled in said Grant District and from wells to be drilled in the future to Applicant's existing pipeline for transportation and delivery to The Ohio Fuel Gas Company for redelivery to the plants of Anchor Hocking Glass Corporation (Anchor Hocking) located at Lancaster, Ohio.

Total estimated cost of Applicant's proposed construction is stated to be $25,454, and will be financed with current funds.

A temporary certificate for the installation and operation of the facilities requested has been granted by Commission letter-order issued April 9, 1965.

After due notice, no petition to intervene, motion of intervention or protest to the granting of the application has been filed.

At a hearing held on April 29, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Gas Transport, Inc., a Delaware corporation having its principal place of business in Lancaster, Ohio, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 28, 1941, in Docket No. G-213, (2 FPC 1079).

(2) The facilities as hereinbefore described, as more fully described in the application and exhibits in this proceeding, will be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission and the construction and operation thereof and the transportation of

natural gas are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and transportation of natural gas are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (b), (c) (3), (c) (4), and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to the Applicant in this proceeding authorizing the construction and operation of facilities and the transportation of natural gas, as hereinbefore described and as more fully described in the application and exhibits in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c) (3), (c) (4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation and the transportation of natural gas authorized in paragraphs (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

ILLINOIS POWER COMPANY, DOCKET NO. CP65-279

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND DELIVERY OF NATURAL GAS

(Issued May 4, 1965)

On March 9, 1965, Illinois Power Company (Applicant) filed in Docket No. CP65-279 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Panhandle Eastern Pipe Line Company (Panhandle) to establish physical connection of its natural gas transmission facilities with the proposed facilities of and to deliver natural gas to Applicant for resale and distribution in the Villages of Dawson, Buffalo and Mechanicsburg, and environs, Sangamon County, Illinois, all as more fully set forth in the application in this proceeding.

Applicant proposes to construct and operate a lateral pipeline from Panhandle's Peoria lateral to the communities to be served as well as the necessary distribution facilities for said communities. The total estimated third year peak day and annual natural gas requirements for the three communities are 905 Mcf and 63,269 Mcf, respectively. Applicant is not requesting herein any additional volumes of gas from Panhandle for service to the three villages but merely a new delivery point necessary for such service.

The total estimated cost of Applicant's proposed facilities is $340,780, which cost will be financed with funds on hand available for construction.

Applicant states that it has obtained the necessary authorizations from the Illinois Commerce Commission and from each of the three villages.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on March 20, 1965 (30 F.R. 3729). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G–254 (4 FPC 1081).

(2) Applicant, Illinois Power Company, is a corporation duly organized and existing under the laws of the State of Illinois and is authorized to engage in the business of distributing and selling natural gas within said State.

(3) It is necessary and desirable in the public interest that Panhandle be directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to deliver at said connection up to 905 Mcf of natural gas per day to Applicant, as set forth in the application and as hereinafter ordered and conditioned.

(4) Applicant should be prepared to receive natural gas from Panhandle within one year from the date of issuance of this order.

(5) The requirement that Panhandle serve Applicant, as proposed, will not place any undue burden upon Panhandle nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Panhandle Eastern Pipe Line Company be and it is hereby directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to deliver at said connection up to 905 Mcf of natural gas per day to Applicant, all as hereinbefore described and as more fully set forth in the application in this proceeding.

(B) Applicant shall be prepared to receive natural gas from Panhandle within one year from the date of issuance of this order.

(C) Panhandle shall report to the Commission in writing the date of commencement of service to Applicant within ten days thereof.

(D) Panhandle shall file, pursuant to Part 154 of the Commission's Regulations, a service agreement with Applicant reflecting the additional delivery point.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

MICHIGAN GAS AND ELECTRIC COMPANY, DOCKET NO. E–7222

ORDER INSTITUTING INVESTIGATION AND PROVIDING FOR HEARING

(Issued May 4, 1965)

Michigan Gas and Electric Company (MGE), a Michigan Corporation, with its principal place of business at 100 South Main, Three Rivers, Michigan by rate schedule filings completed on July 1, 1964, filed with this Commission an agreement and a supplement thereto[1] with the City of Dowagiac, Michigan, Board of Public Works, (Dowagiac) as an initial rate schedule and a supplement to a filed rate schedule[2] providing for service to the Village of Paw Paw, Michigan (Paw Paw).

Available data indicate that MGE's average annual charges to Paw Paw for the 12 months ending April 30, 1964, were 15 mills per kwh. MGE's average annual charges to Dowagiac for the same 12 months period were 9.4 mills per kwh. MGE serves Paw Paw at a flat rate of 1.5¢ per kwh with a yearly minimum of $2,700. The Company's deliveries to the Village for the 12 month period were 10,745,900 kwh, and its total charge was $161,188.50. MGE's sales to Dowagiac are made at a two part rate which may be expressed as a demand charge of $2.35 per kw and an accompanying energy charge of 3½ mills per kwh. The latter rate is subject to changes in taxes and a commodity adjustment to reflect wholesale price changes.

Numerous conferences between representatives of MGE and staff have failed to disclose a sufficient cost justification for MGE rates and charges and their possible discriminatory or preferential effect. However, the Commission is not satisfied that either of MGE's rate schedules are consistent with statutory standards and it appears that there is a need for formal investigation and hearing of MGE's rates, charges and services to Dowagiac and Paw Paw pursuant to the provisions of Sections 205, 206, 301, 304, 307 and 309 of the Federal Power Act.

The Commission finds:

Review and analysis of available data indicate that MGE's Rate Schedules FPC Nos. 2 and 4 as supplemented may result in excessive rates or charges or may be unduly discriminatory, unduly preferential, or otherwise unjust, unreasonable and unlawful within the meaning of the Federal Power Act. Accordingly, it is necessary and appropriate for the purposes of the Federal Power Act, particularly Sections 205, 206, 301, 304, 307 and 309 thereof, that an investigation and hearing be held as hereinafter provided.

The Commission orders:

(A) A public hearing shall be held concerning the lawfulness of MGE's Rate Schedules FPC Nos. 2 and 4 as supplemented, at the time and place and in the manner all to be fixed by notice of the Secretary.

(B) MGE shall within 45 days from the date hereof, submit a special report setting out cost and revenue data using 1964 as the test year, showing MGE's costs of rendering service to Dowagiac and Paw Paw, calculated in accordance with applicable Commission precedents and submitted in the form as prescribed in Statements A through O, Section 35.13(b)(4)(IV) of the Commission's Regulations under the Federal Power Act. An original and nine conformed copies of the report shall be submitted.

(C) The foregoing submission shall not preclude or limit any additional showing by MGE and shall be without prejudice to future action taken by the Commission or its staff, or to any future position MGE or others may wish to take as to the significance of, or conclusion to be drawn from the above factual report.

(D) Notices of intervention or petitions to intervene in this proceeding may be filed with the Commission on or before May 28, 1965, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.37).

---

[1] The filing consisted of an agreement dated August 4, 1952, and a supplement thereto dated July 16, 1962, which have been respectively designated in the Commission's files as Michigan Gas and Electric Company, Rate Schedule FPC No. 4 and Supplement No. 1 thereto.

[2] The supplement is designated in the Commission's files as Michigan Gas and Electric Company, Supplement No. 1 to Rate Schedule FPC No. 2.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

MISSISSIPPI RIVER TRANSMISSION CORPORATION, DOCKET NO. CP65-227

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 4, 1965)

On January 27, 1965, Mississippi River Transmission Corporation (Applicant) filed in Docket No. CP65-227 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application on file with the Commission.

Applicant proposes to install during calendar year 1965 and operate up to 900 additional horsepower of compression in the Woodlawn Field, Harrison County, Texas.

The application states that the proposed compressor facilities are required in order to enable Applicant to maintain deliverability from dedicated reserves in the face of continued pressure declines in the field and individual wells.

The estimated cost of Applicant's proposed construction is $158,290, and will be financed with cash on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 29, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought and upon consideration of the record,

The Commission finds:

(1) Applicant, Mississippi River Transmission Corporation, a Delaware corporation having its principal place of business in St. Louis, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued November 29, 1960, in Docket No. CP60-95 (24 FPC 1020).

(2) The proposed construction and operation of facilities, as hereinbefore described and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, authorizing the construction and operation of facilities as

hereinbefore described and as more fully described in the application in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, during the calendar year 1965.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

MORENCI NATIONAL GAS COMPANY, DOCKET NO. CP65–161

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued May 4, 1965)

On December 4, 1964, Morenci National Gas Company (Applicant) filed in Docket No. CP65–161 an application, as supplemented on January 12, 1965, February 15, 1965, and March 5, 1965, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing American Louisiana Pipe Line Company (American Louisiana) to make a physical connection of its transmission facilities with Applicant's proposed distribution facilities and to sell and deliver natural gas to Applicant for distribution and resale to residential and commercial customers located in Morenci and Weston, Michigan, all as more fully described in the application.

The estimated volumes of natural gas required to supply Applicant's annual and peak day requirements for the initial three years of proposed operations are stated to be:

	First year	Second year	Third year
Annual (Mcf)	258, 054	276, 742	295, 819
Peak day (Mcf)	1, 898	2, 080	2, 281

The natural gas to be purchased by Applicant from American Louisiana may be supplemented by deliveries of gas from a local producer of gas in intrastate commerce, Morenci Gathering System, Inc. Such deliveries will be made at the same price at which gas service is available from American Louisiana and will require the construction of no new facilities.

The total third year cost of Applicant's facilities to be constructed pursuant to the instant program is estimated to be $610,265, of which $330,000 is to be financed through 20 year First Mortgage Bonds and the remainder through common stock. These facilities consist of 14 miles of transmission line extending from a point on the main transmission line of American Louisiana near Morenci, Michigan, the distribution systems in Morenci and Weston, Michigan.

The Michigan Public Service Commission has authorized Applicant to serve the proposed area and to construct the proposed facilities, conditioned upon the approval sought by the instant filing.

On January 6, 1965, American Louisiana filed its answer with the Commission and stated that it has no objections to providing the requested service and that it can provide such service from existing sources of gas supply and without construction of additional transmission facilities.

Due notice of the filing of the application and opportunity for hearing thereon was published in the Federal Register on December 18, 1964 (29 F.R. 18023). No protest, petition to intervene or notice of intervention has been filed.

The Commission finds:

(1) American Louisiana Pipe Line Company, a Delaware corporation with its principal place of business in Detroit, Michigan is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order accompanying Opinion No. 276 in Docket No. G-2306, et al., issued October 1, 1954 (13 FPC 380).

(2) Applicant is a public utility company in the State of Michigan and is authorized to construct and operate facilities to distribute and sell natural gas to inhabitants of the communities along its proposed distribution system.

(3) It is necessary and desirable in the public interest that American Louisiana be directed to establish physical connection of its transportation facilities with the facilities proposed by Applicant and to sell and deliver up to 2,281 Mcf of natural gas per day to Applicant, as hereinbefore described and as more fully set forth in the application, as hereinafter ordered and conditioned.

(4) The requirement that American Louisiana serve Applicant, as requested, will not place an undue burden upon it nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) American Louisiana Pipe Line Company be and is hereby directed to establish physical connection of its natural gas transmission system with the facilities of the Applicant and to sell and deliver up to 2,281 Mcf of natural gas per day to Applicant, all as hereinbefore described and as more fully described in the application.

(B) American Louisiana Pipe Line Company shall execute and file with the Commission a service agreement with Applicant in accordance with the Commission's Regulations.

(C) Applicant shall be prepared to receive natural gas from American Louisiana within one year from the date of this order.

(D) American Louisiana shall notify the Commission of the commencement of service within 10 days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

APPLICATIONS OF INDEPENDENT PRODUCERS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ABANDONMENT—NUMBER OF COPIES, DOCKET NO. R-274

ORDER NO. 297

AMENDING §§ 157.23 AND 157.30 OF REGULATIONS UNDER THE NATURAL GAS ACT

(Issued May 4, 1965)*

This order amends § 157.23 of the Regulations Under the Natural Gas Act by reducing the number of copies of an application for a certificate of public convenience and necessity now required by paragraphs (a) and (b) of that section and the form set out in Appendix A thereto. It also specifies the number of copies of applications for abandonment to be filed pursuant to § 157.30.

---

*Published in the Federal Register on May 12, 1965 (30 F.R. 6518).

We have recently appraised our needs in this regard and have determined that four copies of applications by both Class A and Class B producers will be adequate.

The Commission finds:

(1) Since the amendments herein adopted either reduce or clarify present procedural requirements, compliance with the notice and effective date provisions of section 4 of the Administrative Procedure Act is unnecessary.

(2) The amendments adopted herein are necessary and appropriate for the purposes of administration of the Natural Gas Act.

The Commission, acting pursuant to the authority granted by the Natural Gas Act, as amended, particularly sections 7 and 16 thereof (52 Stat. 825, 830; 15 U.S.C. 717f(c), 717o), *orders:*

(A) Effective upon the issuance of this order, §§ 157.23 and 157.30, Part 157, Subchapter E of Chapter I, Title 18 of the Code of Federal Regulations are amended as follows:

1. In § 157.23 and Appendix A thereto, delete the words "original and 7 copies" and "original and five copies" wherever they appear therein, and in lieu thereof insert in each case the words "original and 3 copies".

2. Amend paragraph (a) of § 157.30 to read as follows:

"§ 157.30 Abandonment of service.

(a) No independent producer as herein defined shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained upon application (original and 3 copies), after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment. *Provided, however*, That nothing herein shall be construed as interfering or as intended to interfere with or to prevent compliance by a natural-gas company with valid conservation orders of a State agency relating to the production or gathering of natural gas."

(B) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

THE SUPERIOR OIL COMPANY, v. TRUNKLINE GAS COMPANY, UNION OIL COMPANY OF CALIFORNIA, AND PAN AMERICAN PETROLEUM CORPORATION, DOCKET NO. CI65-300

ORDER GRANTING MOTION TO DISMISS COMPLAINT

(Issued May 4, 1965)

On April 20, 1965, the Superior Oil Company (Superior) filed a motion to dismiss its complaint under Section 5(c) of the Outer Continental Shelf Lands Act and Section 16 of the Natural Gas Act, previously filed on September 24, 1964, against Trunkline Gas Company (Trunkline), Union Oil Company of California (Union Oil), and Pan American Petroleum Corporation (Pan American).

It appears from the motion that Superior has assigned and transferred to Union Oil and Pan American, effective as of April 20, 1965, all interests in those leases which were the subject of this complaint. The transfer of the natural gas properties which were the source of the complaint leaves no subject matter for hearing by the Commission.

All parties, including the Commission staff, have indicated that they have no objection to the grant of the motion for dismissal.[1] Consequently, it appears that the granting of the motion by Superior herein would be in the public interest.

The Commission orders:

The motion filed herein by Superior to dismiss its complaint of September 24, 1964 under the Outer Continental Shelf Lands Act and Section 16 of the Natural Gas Act, is hereby granted.

---

[1] The parties indicated their position as follows: (1) Trunkline by letter dated April 20, 1965; (2) Union Oil and Pan American by an answer to the motion, filed April 21, 1965; (3) Staff Counsel and the Public Service Commission of the State of New York by statements on the record on April 22, 1965.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

WHEELER GAS COMPANY, DOCKET NO. CP64-191

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 4, 1965)

On February 28, 1964, Wheeler Gas Company (Applicant) filed in Docket No. CP64-191 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a meter and regulator station on its 4-inch gas supply line in Wheeler County, Texas, for the receipt of up to 1,500 Mcf of natural gas per day from Natural Gas Pipeline Company of America (Natural), all as more fully set forth in the application.[1]

Total estimated cost of Applicant's proposed construction is $3,607.30, and will be financed with cash on hand.

Temporary authorization for the proposed facilities was granted by Commission letter dated March 10, 1964.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 29, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Wheeler Gas Company, a partnership existing under the laws of the State of Texas and having its principal place of business in Wheeler, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of February 24, 1959, in Docket No. G-16788 (21 FPC 270).

---

[1] Natural was directed to provide the proposed service to Applicant by order issued November 20, 1964, in Docket No. CP65-42, 32 FPC 1350.

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (c) (4), and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, Wheeler Gas Company, authorizing the construction and operation of facilities as hereinbefore described, as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c) (4), and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

ALABAMA POWER COMPANY, PROJECT NO. 2146

ORDER APPROVING PROJECT EXHIBIT L DRAWINGS

(Issued May 5, 1965)

On January 27, 1965, Alabama Power Company, licensee for the Coosa River Project No. 2146, filed application for Commission approval of Exhibit L drawings showing the proposed construction of underwater skimming weirs just upstream from the power intake of the licensee's Lock 3 and Logan Martin developments of the project as parts of the project works.

In its development of the Coosa River under its present program of construction, the licensee will develop about 443 feet of head from about river mile 18 to about river mile 278. Starting with the uppermost development and proceeding downstream therefrom, the developments are known as Weiss, Lock 3, Logan Martin, Lay, Mitchell, Jordan No. 1 and Jordan No. 2. All of these developments have been constructed except Lock 3 which is under construction, Lay which is being modified by increasing its reservoir elevation by 14 feet, Mitchell which was proposed to be modified by increasing its reservoir elevation from 312 feet to 317 feet, and Jordan Nos. 1 and 2 which are being modified by increasing the elevation of the joint reservoir and in other respects.

Near Childersburg, Alabama, about 9 miles downstream from Logan Martin dam and just upstream from the existing Lay reservoir are located industrial plants, particularly the Coosa River Newsprint Division of Kimberly Clark Corp., and Beaunit Fibers, which two industries require process water. Prior to 1964, the river above Childersburg was an open stream and the amount of dissolved oxygen in the water at this location was no lower than about 6 parts per million in the summer months. By letter of February 2, 1965, the Alabama Water Improvement Commission has advised us that the initial operation of the powerplant at the Logan Martin dam resulted in the release of water having a low dissolved oxygen concentration, thereby causing deterioration of water quality in the Coosa River downstream from the dam. The death of fish attributed to that deterioration and its effects on waste assimilative capacity made it necessary for the licensee to revise its operating schedule to permit discharge of water over Logan Martin spillway in order to increase dissolved oxygen concentration in downstream waters. For instance, during the months of July through October 1964, the licensee spilled an average of 2,013 cfs daily for 103 days (about 415,000 acre-feet) which is an equivalent of 21,227,000 kwh of energy.

When Lock 3 development is completed in 1966 and Lay, Jordan, and Mitchell reservoirs are raised, there will be no natural stream remaining between mile 18 and mile 278 and the problem of water quality will be further aggravated. This matter is currently under consideration. Construction of the underwater weirs just upstream from the Lock 3 and Logan Martin power intakes, as shown on the Exhibit L drawings, will permit skimming the upper layers of these reservoirs which usually contain the best quality of water (dissolved oxygen) instead of drawing water deficient in dissolved oxygen from the bottom of the reservoirs. The weir at Lock 3 is designed to skim water from the upper 28 feet and at the Logan Martin development from the upper 20 feet of the respective reservoirs at normal power pool levels.

Inasmuch as Lock 3 is under construction, the weir can be constructed concurrently with the dam structure, but at the existing Logan Martin, construction must proceed underwater, and the completion of construction of both weirs should be expedited to take advantage of the construction at Lock 3 and to improve water quality by the earliest practicable date.

By letter dated February 2, 1965, the Alabama Water Improvement Commission recommended favorable consideration of the application for amendment, stating that it is of the opinion that the underwater weirs will alleviate problems of water quality by permitting turbine releases of surface waters relatively high in dissolved oxygen and that the benefits from the weirs will be for downstream recreational purposes, fishing, and reasonable utilization of the water involved for waste assimilation.

The Department of Health, Education, and Welfare has advised that it concurs in the views of the Alabama Water Improvement Commission.

The Department of the Interior has advised that its Bureau of Sports Fisheries and Wildlife believes that the construction of the underwater skimming weirs as proposed by the licensee for Project No. 2146 would improve water quality.

The U.S. Corps of Engineers has advised that the plans of the project structures affecting navigation are satisfactory and tracings have been approved pursuant to Section 4(e) of the Federal Power Act insofar as the interests of navigation are concerned.

The Commission finds:

(1) Public notice of the application has been given. No protests or petitions to intervene have been received.

(2) The following designated and described Exhibit L drawings conform to the Commission's Rules and Regulations and should be approved as part of the license for the project.

Sheet No.	FPC No.	Showing
7G	2146-220	Lock 3 development—submerged weir around turbine intakes.
10E	2146-219	Logan Martin development—submerged weir around turbine intakes.

The Commission orders:

(A) The Exhibit L drawings designated and described in finding (2) above are hereby approved as parts of the license for Project No. 2146.

(B) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgment of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, PROJECT NO. 2481

ORDER MODIFYING LICENSE (MINOR) ON REHEARING

(Issued May 5, 1965)

On March 22, 1965, Public Service Company of New Hampshire (Applicant) filed an application for rehearing of the Commission's order issued February 24, 1965, 33 FPC 319, with respect to Applicant's Swans Falls Hydroelectric Plant located on the Saco River in the Town of Fryeburg, Maine, Project No. 2481. The Applicant requests that the termination date of the license be changed from December 31, 1988 to March 1, 1966, and that Article 13 be deleted.

Applicant represents that because of the continued deterioration of the plant, it should be retired from service on or before March 1, 1966 and that Article 13, which requires the filing of a recreational use plan within one year from the date of the license, should be eliminated from the license because it would impose additional financial burdens on a plant already uneconomical to operate.

The Commission finds:

(1) It is appropriate and in the public interest to modify the license as requested by the Applicant by substituting "March 1, 1966" for "December 31, 1988" in the second paragraph on *supra*, page 319 and in ordering paragraph (A) on *supra*, page 320, and by deleting Article 13 of the order issued February 24, 1965.

(2) Under the circumstances recited by the Applicant it is appropriate to further modify the order issuing license by deleting finding number 5 therefrom and by waiving Section 10(a) of the Federal Power Act pursuant to Section 10(i) of the Act.

The Commission orders:

(A) The Commission's order of February 24, 1965 issuing license to the Public Service Company of New Hampshire for Project No. 2481 is hereby modified and amended on rehearing as described above in finding numbers (1) and (2) herein.

(B) The aforementioned Commission order issued February 24, 1965, as amended by this order, shall be accepted by the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., PROJECT NO. 2338

ORDER DENYING MOTIONS

(Issued May 6, 1965)*

On April 26, 1965, Scenic Hudson Preservation Conference, Town of Cortlandt, Town of Putnam Valley, and Town of Yorktown, Interveners in this proceeding, filed joint motions (1) to transfer the scheduled hearing of May 4, 1965 from Washington, D.C. to New York City; (2) to provide for an adjourned hearing at which interested parties may have an opportunity to present evidence and to cross-examine Consolidated Edison; and (3) to expand the scope of the hearing (a) to include consideration of underground transmission, (b) to include consideration of certain legal rights relating to ordinances concerning regulation of underground transmission lines, and (c) to permit certain testimony with respect to fish life.

As we stated in our order issued April 30, 1965 on the petition of the Secretary of the Interior to intervene and his motion for prehearing conference and continuance of the hearing, we think the examiner will be in a better position in the light of the circumstances prevailing at the time of hearing to determine such matters as which of the issues should be heard first, the nature, timing and place of presentation, and whether to grant a reasonable postponement for cross-examination and preparation of rebuttal testimony. We think that order disposes of the first and second motions of Interveners.

The motion to expand the scope of the hearing is in effect an application for rehearing of our order issuing license in which we specifically defined the scope of the hearing scheduled for May 4. In our order issued today denying the application filed by these interveners for rehearing we set forth the reasons why the scope of the hearing should not be expanded. Those reasons are incorporated herein by reference and are the reasons for our denial of this motion.

The Commission finds:

The joint motions filed by Interveners should be denied.

The Commission orders:

The joint motions filed by Scenic Hudson Preservation Conference, Town of Cortlandt, Town of Putnam Valley, and Town of Yorktown are hereby denied.

---

*See order issued July 1, 1965 denying rehearing, etc., 34 FPC 1. Set aside, 354 F. 2d 608 (CA2-1965). See order on remand, issued January 25, 1966, 35 FPC 151.

OPINION NO. 452–A

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.,
PROJECT NO. 2338

OPINION AND ORDER DENYING APPLICATIONS FOR REHEARING AND PETITION TO REOPEN PROCEEDINGS AND DENYING MOTION FOR STAY

(Issued May 6, 1965)*

Syllabus

1. Since conclusion that transmission lines be overhead was based on evidence that costs of underground transmission could not be justified, Commission *affirms* determination limiting further consideration of primary lines to overhead transmission. P. 966.

2. Serious weight must be given to State's judgment in setting aside certain lands as parks; nevertheless, ultimate test for transmission line route will be overall public interest, considering all factors. P. 966.

3. Evidence concerning alternatives establishes that Cornwall project is far superior to any possible alternative. P. 968.

4. Contention that Commission erred in issuing license while deferring final decision on transmission line route and design of fish facilities rejected—such action was clearly consistent with Commission's obligations under Section 10(a). P. 968.

5. Congress entrusted licensing of hydroelectric power developments along navigable waterways to Commission—although views of State and local authorities carry great weight, it remains Commission's statutory responsibility to determine whether license should issue and conditions be imposed. P. 968.

6. Commission is not required to hold up issuance of license which clearly meets statutory standard on basis of expectation or hope by some parties that law may eventually be changed. P. 969.

7. Contention that Commission has not met its obligations under Section 10(a) rejected—Commission necessarily must consider licensing proposals individually and appraise their impact on comprehensive river development. P. 969.

8. Cornwall involves no reservoir in or barrier across river itself, thus does not present complex problems of integration with upstream or downstream projects frequently created by conventional hydroelectric projects. P. 969.

9. Under Section 313(c) of the Act a stay does not result automatically from filing of application for rehearing or commencement of judicial review. P. 969.

10. Applicant for stay must satisfy each of tests prescribed by *Virginia Petroleum Jobbers* to justify extraordinary relief represented by stay of administrative order—interveners here have not done so. P. 969.

11. Commission *denies* applications for rehearing, petitions to reopen proceedings and motion for stay.
Commissioner Ross *dissenting*.

---

*Set aside, 354 F. 2d 608 (CA2–1965). See order on remand, issued January 25, 1966, 35 FPC 151.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SWIDLER, *Chairman:*

On March 9, 1965, 33 FPC 428, the Commission issued its Opinion No. 452 and Order, "Opinion and Order Issuing License and Reopening and Remanding Proceeding for Additional Evidence on the Location of the Primary Lines and Design of Fish Protective Facilities." Applications for rehearing and for further reopening thereof were filed on April 8, 1965, individually by Philipstown Citizens Association and jointly by a number of other interveners headed in the application by Scenic Hudson Preservation Conference.[1] In addition Scenic Hudson, acting alone, has filed a motion for stay of the Opinion and order pending action on the application for rehearing and, if that is decided adversely to it, until final disposition of judicial review proceedings. An answer opposing the motion for stay was filed by Consolidated Edison on April 19, 1965.

Philipstown Citizens Association addresses its application for rehearing solely to the issue of the primary transmission lines of the project. Specifically, it urges that the Commission committed error in excluding further consideration of underground transmission at the remanded hearing which started on May 4, 1965. It also contends that we should not have directed that the proposed routes for the overhead transmission lines to be considered at such hearing "be planned so as to avoid crossing State park lands."

The subject of underground transmission, and the possibility of imposing such a requirement on Consolidated Edison as a condition to the issuance of the license, was extensively considered in our opinion. Our conclusion that the transmission lines, whatever their final location, be overhead and not underground was based on evidence establishing that the costs involved in underground transmission for this project, beyond the extent already required, could not be justified in the public interest. Philipstown has submitted nothing which would warrant a different conclusion. Consequently, the determination to limit the further consideration of the primary lines to overhead transmission must be affirmed.

Philipstown's objection that we should not have directed that the proposed transmission lines be planned so as to avoid crossing State park lands is not well founded. The direction to avoid the park lands was not absolute. The notice issued March 26, 1965, in this proceeding, "Notice of Alternative Overhead Transmission Line Routes of the Cornwall Pumped Storage Project," lists four potential transmission line routes of which route No. 4 would cross a segment of the park. We believe that serious weight must be given the considered judgment of the State in setting aside certain lands as parks. Nevertheless, the ultimate test for the transmission line route will be the overall public interest, considering all factors.

The petition for rehearing filed jointly by Scenic Hudson and the other interveners opposing the project is grounded on a number of propositions. First, they contend that there are serious dangers inherent in the project which we did not adequately explore and to which we gave insufficient weight. They list these dangers as the danger to fish life, the danger to water supplies and plant life, the danger to people and property below the dikes, and the danger to scenic beauty. Contrary to the allegation, each of these factors was fully considered by us in our decision.

Our requirement that applicant install a fish screen in front of the project intake facilities was in accordance with a recommendation by the United States

---

[1] In addition to Scenic Hudson the application includes the Town of Cortlandt, the Town of Putnam Valley and the Town of Yorktown.

Department of the Interior contained in a letter from its Assistant Secretary to the Commission dated July 18, 1963, expressing the Department's comments on Con Edison's application. Moreover, we have required further hearings on the design of the protective devices to insure their adequacy, as well as providing for cooperation between Con Edison, the Fish and Wildlife Service of the Department of the Interior and the Fish and Game Division of the New York State Conservation Department in the design of the fish screen, and we have retained continuing jurisdiction to require any needed modification of the screening facility which operating experience may prove desirable. We believe these provisions are adequate to assure suitable protection of this natural resource.

The apprehension of danger to water supplies and plant life is groundless, in our opinion. The testing procedure established, as well as our reservation of the right to require Con Edison to take appropriate measures to assure against water seepage from the reservoir and to compensate for any damages, are adequate to remedy any conceivable adverse effect from this aspect of the project.

Petitioners contend that the standards used to determine the safety of the project are Corps of Engineers' standards applicable to flood control projects. On the contrary, the evidence shows that the Corps' standards were adapted to take into account the operating characteristics of pumped storage projects and allowances were made for the different stresses which would actually occur. The tests of operating conditions showed in each instance that the design characteristics substantially exceed the minimum standards necessary for approval by the Corps.

The danger of the dams giving way was considered at length in the hearings held in this case. There was expert testimony that the dams were "over-designed" and "over-safe." The Commission's engineering witness agreed that there was no question as to the stability of the dike design as presently planned. Our review of this evidence gives us no cause to doubt the complete stability of any of the project structures. In addition, Article 31 of the license requires that three independent consultants be employed to make further recommendations with regard to the safety and stability of the entire upper reservoir, including the dikes, and that revised design exhibits, reflecting their conclusions, are to be filed for our approval. Under Article 33 Con Edison is prohibited from beginning construction of the project structures until the Commission approves such exhibits showing the final design of the project works. These are standard requirements in all licenses issued by the Commission.

In their application for rehearing the interveners contend that the matter of possible collapse of the dams is of particular concern in this case since a geologic fault passes directly through the area of the proposed reservoir. The interveners are aware of course that the existence of this fault was recognized in the testimony given during the hearing by Mr. Thomas W. Fluhr, a professional engineer and a geologist of outstanding reputation. As stated by Mr. Fluhr, the fault, which extends in a direction north 35 degrees east and crosses near the Village of Cornwall, "lies to the northwest of the [project] site, entirely outside of the site, and does not cross the site at any point." Mr. Fluhr concluded that the fault "is entirely outside and away from the site and can have no effect on the project." The geologic report submitted by Con Edison[3] likewise refers to the fault, pinpointing its location as lying at the toe of the northwest slope of Storm King Mountain on the west side of the Hudson River and extending along the toe of the northwest slope of Breakneck ridge on the east side. The report notes that the fault "is several thousand feet north of the nearest project feature" and that the closest project structure is not the reservoir but the pumping-generating station. The report further notes that cores taken from the plant area showed no disruption or structural disturbance of the rock which could be attributed to the fault and that the fault is entirely inactive.

---

[3] Amendments to application filed September 13, 1963, Exhibit L, Supplement B, pp. 2, 6–8.

The impact on the scenic beauty of the area which will result from the project has been found to be minimal. The petition for rehearing presents no evidence of which we were not aware when we issued our decision nor does it give us any cause to doubt our conclusion.

Scenic Hudson, *et al.*, contend that additional evidence should be received regarding the availability of alternatives to the construction of the Cornwall project. During the hearing both sides introduced a substantial amount of evidence concerning various alternatives and these were carefully evaluated by us. The evidence regarding the alternatives establishes that the Cornwall project is far superior to any possible alternative. At best, the evidence now offered would appear to consist on a disagreement between experts. At this stage of the proceeding in particular, the attempted introduction of additional evidence of this character provides no basis for a reopening of the record.

Interveners contend that we erred in issuing a license to Con Edison while, at the same time, deferring our final decision on the transmission line route and the design of the fish protective facilities. They argue that we have thereby fragmentized the project and have proceeded without weighing all the factors required by Section 10(a) of the Federal Power Act. We do not agree. Our decision to issue the license was made on consideration of all necessary elements. In fact, our opinion specifically provides for transmission lines and fish protective facilities to be included in the project and discusses in detail both the impact of the transmission line on the scenic values of the area and the effect of the project on the Hudson River fish resources. Our determination to accept more evidence of the best transmission line route was motivated by our incomplete knowledge of the Applicant's future transmission plans for this area. A more careful study of the alternative routes as they may relate to these plans was necessary. Our determination to accept additional evidence on the design of the fish protective facilities was in furtherance of our continuing authority under the license to require the Applicant to take all necessary measures to protect fish. Thus, our action in remanding these portions of the proceeding was clearly consistent with our obligations under Section 10(a) and did not represent a deferral of our consideration of any phase of the project. Such a procedure is a common practice of the Commission.

Interveners further allege that the proceeding "should be reopened in order that consideration may be given to the grave policy questions involving the relation of the Federal authority to that of the State and of local municipalities." The answer to this is, of course, that Congress long ago entrusted the licensing of hydroelectric power developments along navigable waterways to this Commission. Although the views of State and local authorities carry great weight, and those of the State were earnestly solicited by us, it remains the statutory responsibility of the Federal Power Commission to determine whether a license should or should not be granted and, if so, the conditions to be imposed thereon. The Commission is cognizant of the proposals now being made for separate legislation on the development of the Hudson River, and the related requests that we withhold issuance of the license to Con Edison in order to allow consideration of the various bills in Congress and in the New York State Legislature. However, our obligation under existing law to determine the merits of the application is clear. Postponement here would force Con Edison to make other less suitable arrangements and would be contrary to our statutory obligation. The Commission is not required to hold up the issuance of a license which clearly meets the statutory standards on the basis of an expectation or hope by some of the parties that the law may eventually be changed.

The joint interveners contend that the record should be reopened to allow the introduction of further evidence for the reason, among others, that litigation is pending which involves the water supply situation of the Village of Cornwall. The effect of the project on that water supply and the plans for redevelopment of the Village water system were passed on and approved by the Village Board and by the New York State Water Resources Commission. The fact that litigation may be initiated or that certain conditions contained in the order of the Water Resources Commission remain to be met before the transfer of the upper reservoir can be effected is not material to our determination of this proceeding. In the event any changes are proposed in the present plans of the project, it will be necessary, of course, to submit revised exhibits to the Commission for our approval.

Scenic Hudson's contention that the Commission has not met its obligations under Section 10(a) in that it has not evaluated the project in the light of a "comprehensive plan" for the development of the entire Hudson River, is without merit. The Commission necessarily must consider licensing proposals individually, and appraise their impact on comprehensive river development. The evidence submitted to the Commission in this proceeding bears out the unique adaptability of the Cornwall site to the development of the planned pumped storage project. Our careful evaluation of the many issues raised at the hearings, including scenic considerations, fish protection, the transmission facilities, safety, recreation, navigation and the inadequacies of the various alternatives, as well as the conditions imposed in the public interest in issuing the license all attest to the appropriateness of the Cornwall project for the development of the Hudson River for the improvement and utilization of water power development and for all other beneficial public uses, as required by Section 10(a).

We point out, additionally, that inasmuch as Cornwall involves no reservoir in or barrier across the river itself, it does not present the complex problems of integration with upstream or downstream projects such as are frequently created by conventional hydroelectric projects.

In its motion for stay, Scenic Hudson contends that the failure to grant a stay will result in irreparable harm to it since, if Con Edison is allowed to proceed with the clearing and construction of the reservoir, powerhouse and switching station, it will make moot the issues upon which Scenic Hudson has based its objections to the license.

Under Section 313(c) of the Act a stay does not result automatically from the filing of an application for rehearing or the commencement of judicial review proceedings. Four tests have been prescribed by the Court of Appeals, each of which an applicant for stay must satisfy in order to justify the extraordinary relief represented by a stay of an administrative order.[3] These tests require the applicant to (1) Make a strong showing that it is likely to prevail on the merits of its appeal; (2) Show that in the absence of a stay it will be irreparably injured; (3) Show that the issuance of a stay will not have a serious adverse effect on other interested persons; and (4) Show that the public interest would not be adversely affected by the stay.[4]

---

[3] *Virginia Petroleum Jobbers* v. *F.P.C.*, 259 F. 2d 921 (CADC–1958); *Pacific Northwest Power Co.*, Opinion No. 418–A, 31 FPC 1051, 1059; *Shell Oil Co., et al.*, Opinion No. 382–A, 29 FPC 851, 852–853.

Interveners have alleged no facts or principles of law in their applications for rehearing not fully considered by the Commission and determined on the basis of a full and complete record and have not demonstrated any likelihood that their contentions might prevail on judicial review. All matters raised by Scenic Hudson and alleged to have been inadequately explored or given insufficient weight by the Commission are, in fact, supported by substantial evidence in the record. That Scenic Hudson and the others opposing the project may disagree with our judgment as to where the public interest lies is no basis for granting a stay.

The record does not support the claim of irreparable injury. Even if Con Edison proceeds with the construction during the pendency of judicial review proceedings, the total impact thereof on the scenic resources, particularly those lying on the west side of the Hudson, have been fully weighed and found to be "minimal." In addition, as previously noted, Con Edison will not be able to begin actual construction until the completion of additional studies. These activities will not be completed before an order can be appealed and stay sought from a court.

A consideration of whatever damage might be done in the period necessary for complete judicial review must be weighed against the adverse effect that further delay would have on the applicant and the public interest. The Cornwall project has been planned to supply the peak power requirements of New York City. Con Edison must be prepared to supply those needs in the near future. If the completion date is delayed, as it would be if a stay were granted until final disposition of judicial review proceedings, applicant could be placed in a position where it would be required to take extraordinary and expensive measures to meet the demands for electricity during peak periods and may very well be forced to build one of the alternative sources of power supply which we have found would cost at least $12,000,000 a year more than Cornwall. The additional burden entailed by such measures would be cast directly on Con Edison's consumers. Moreover, if an inferior project were built the loss would indeed be irreparable. In addition, the public would be deprived of other project benefits, such as improved service reliability, for the duration of the stay. Thus, there is an urgent need for the project and a stay would not serve the public interest.

For the reasons herein discussed, we find that the applications for rehearing and the motion for stay filed by Scenic Hudson should be denied.

The Commission further finds:

(1) The assignments of error and grounds for rehearing set forth in the applications for rehearing and petition to reopen filed in this proceeding present no facts or legal principles which would warrant any change or modification in the Commission Opinion No. 452 and accompanying order.

(2) There is no justification for, and the public interest would not be served by, granting a stay of Opinion No. 452 and order.

The Commission orders:

(A) The applications for rehearing and reopening filed herein by Philipstown Citizens Association and jointly by the Scenic Hudson Preservation Conference, the Town of Cortlandt, the Town of Putnam Valley and the Town of Yorktown are hereby denied.

---

[4] "In litigation involving the administration of regulatory statutes designed to promote the public interest, this factor necessarily becomes crucial." *Virginia Petroleum Jobbers* v. *F.P.C., supra,* 259 F. 2d 921, 925.

(B) The motion for stay of Opinion No. 452 and order filed by Scenic Hudson Preservation Conference is hereby denied.

Commissioner Ross *dissenting* for the reasons set forth in his separate statement accompanying Opinion No. 452.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CITY OF DUNLAP, TENNESSEE, DOCKET NO. CP65–212

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued May 6, 1965)

On January 12, 1965, the City of Dunlap, Tennessee (Applicant) filed in Docket No. CP65–212 an application, as supplemented on January 22, March 10, and March 29, 1965, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing East Tennessee Natural Gas Company (East Tennessee) to establish physical connection of its natural gas transmission facilities with the facilities proposed to be constructed and operated by Applicant, and to sell and deliver natural gas to Applicant for resale and distribution in Whitwell, Daus, Powell's Crossroads, and Dunlap, Tennessee, and environs, all as more fully set forth in the application.

Estimated volumes of natural gas necessary to meet Applicant's annual and peak day requirements for the initial three-year period of proposed operations will be purchased under East Tennessee's Rate Schedule SG–1 and are stated to be:

	First year	Second year	Third year
Annual (Mcf)	52,358	78,612	106,072
Peak day (Mcf)	873	1,296	1,718

Applicant will construct and operate approximately 21.05 miles of 4½-inch and 2.75 miles of 1½-inch transmission pipelines from a proposed interconnection in Marion County, Tennessee, to its proposed distribution facilities in the cities of Dunlap and Whitwell and the rural communities of Daus and Powell's Crossroads in Sequatchie and Marion Counties, Tennessee. The estimated cost of Applicant's proposed lateral line and distribution system is $598,000 and will be financed by the sale of natural gas revenue bonds to the Southern Bond Company of Jackson, Mississippi.

East Tennessee, on February 15, 1965, advised the Commission it had no objection to providing the requested service.

Due notice of the filing of the subject application and opportunity for hearings thereon have been given publication in the Federal Register on January 26, 1965 (30 F.R. 811). No protest, petition to intervene or request for hearing has been filed in this proceeding.

The Commission finds:

(1) East Tennessee Natural Gas Company, a Tennessee corporation having its principal place of business in Knoxville, Tennessee, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of May 3, 1949 in Docket No. G–1065 (8 FPC 836).

(2) Applicant, City of Dunlap, Tennessee, is legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section

7(a) of the Natural Gas Act, and has received the necessary local franchises required to render the services proposed.

(3) It is necessary and desirable in the public interest to direct East Tennessee to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicant and to sell and deliver to Applicant under a service agreement to be executed by Applicant with East Tennessee in accordance with the Commission's Regulations, up to 1,718 Mcf per day of natural gas for distribution and resale as hereinbefore described.

(4) Applicant should be prepared to receive natural gas from East Tennessee for distribution in the named communities and environs within one year from the date of the issuance of this order.

The Commission orders:

(A) East Tennessee Natural Gas Company be and is hereby directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant, City of Dunlap, Tennessee, as herein described, and to sell and deliver up to 1,718 Mcf of natural gas daily to Applicant under a service agreement to be executed by Applicant with East Tennessee in accordance with the Commission's Regulations, for distribution and resale as hereinbefore described and as more fully described in the application as supplemented in this proceeding.

(B) East Tennessee shall report to the Commission in writing the date of commencement of service to Applicant within 10 days thereof.

(C) Applicant shall be prepared to receive service as directed herein within one year from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP65-291

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 6, 1965)

On March 17, 1965, El Paso Natural Gas Company (Applicant) filed in Docket No. CP65-291 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of natural gas to Intermountain Gas Company (Intermountain), all as more fully set forth in the application.

Applicant requests authorization for the sale and delivery of natural gas to Intermountain for resale and distribution in Eagle, Star and Middleton, Idaho, and their environs. The proposed sale will be made by means of existing facilities of Applicant. Estimated annual and peak day requirements of Intermountain in the third full year of service are 59,592 Mcf and 500 Mcf of gas respectively.

Applicant states that Intermountain has received the necessary franchises and authorization for its proposed operations from all regulatory bodies having jurisdiction.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 4, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 11, 1944, in Docket No. G–288 (4 FPC 486).

(2) The sale and delivery of natural gas hereinbefore described, as more fully described in the application in this proceeding, is to be in interstate commerce subject to the jurisdiction of the Commission, and said sale and delivery are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed sale and delivery of natural gas by Applicant is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, El Paso Natural Gas Company, authorizing the sale and delivery of up to 500 Mcf of natural gas per day to Intermountain Gas Company as hereinbefore described, as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of such Regulations.

(C) The sale and delivery of natural gas hereby authorized shall be undertaken, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

EL PASO ELECTRIC COMPANY, DOCKET NOS. E–7216 AND E–6933

ORDER AUTHORIZING ISSUANCE OF COMMON STOCK

(Issued May 6, 1965)

El Paso Electric Company (Applicant), incorporated under the laws of the State of Texas and doing business in the States of Texas and New Mexico, with its principal business office at El Paso, Texas, filed an application on April 1, 1965, for an order, pursuant to Section 204 of the Federal Power Act, authorizing the issuance of 2,127,808 additional shares of Common Stock, no par value, for a split up of presently outstanding shares of Common Stock, and an increase in the number of shares of Common Stock under its Amended Employee Stock Purchase Plan from 93,907 shares presently reserved for that purpose to 140,861 shares. Applicant requests that the 140,861 shares be exempted from the Commission's competitive bidding requirements.

Applicant proposes to amend its Charter through appropriate actions by its Common Stockholders by changing its 4,255,615 presently issued and outstanding shares of Common Stock, without nominal or par value, into 6,383,423 shares of Common Stock, without nominal or par value, an increase of 2,127,808 shares, and at the same time to increase the authorized Common Stock from 5,000,000 shares to 7,500,000 shares, without nominal or par value.

The proposed change and stock split-up is to be effective without requiring the surrender of existing certificates and without any change in the amount of Applicant's stated capital, by the issuance to the holders of Common Stock of record as of the close of business on the date the proposed amendment to the Charter becomes effective, which is expected to be May 11, 1965, of certificates for 2,127,808 additional shares of Common Stock, without nominal or par value. Applicant is actually proposing to split its outstanding Common Stock on a 3-for-2 basis.

Applicant represents that the purpose of the proposed change and split-up of its Common Stock is primarily to establish a price per share at a market level that will more readily attract new investors and broaden the interest in the Stock.

The Commission, in previous actions (Docket Nos. E-6886, E-6933 and E-6994), one of which was taken in an order issued on May 11, 1961, 25 FPC 946, authorized the Applicant to issue 101,860 shares of Common Stock under its Employee Stock Purchase Plan. The Commission, in an order issued on June 24, 1964, 32 FPC 1584, extended the expiration date of the Plan from June 30, 1964, to June 30, 1969. The Applicant has 93,907 shares of stock presently reserved for issuance under the Plan. In order for the number of shares reserved for issuance under the Plan to reflect the proposed 3-for-2 split of outstanding stock, the Applicant has requested authorization from the Commission to increase the number of shares so reserved from 93,907 to 140,861. Monies received from stock purchased by the employees will be added to the Applicant's working capital and then used for additions to plant.

Applicant requests that the proposed issuance and sale of up to 140,861 shares of Common Stock, without par value, under the Amended Employee Stock Purchase Plan, be exempted from the Commission's competitive bidding requirements pursuant to Section 34.2(f)(2) of the Commission's Regulations under the Federal Power Act.

Written notice of the application has been given to the Railroad Commission of Texas and the New Mexico Public Service Commission, and to the Governor of each of those States. Notice of the application was also given by publication in the Federal Register on April 14, 1965 (30 F.R. 4774), stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest with the Federal Power Commission, Washington, D.C., 20426, on or before April 29, 1965. No protest, petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission as

heretofore described and set forth in the Commission's order issued January 25, 1962. *El Paso Electric Company*, Docket No. E-7017 (27 FPC 174).

(2) The proposed issuance of 2,127,808 additional shares of Common Stock, no par value, to accomplish a 3-for-2 split of presently outstanding Common Stock, and in addition the proposed issuance and sale of up to 140,861 shares of Common Stock, no par value, pursuant to the provisions of the Amended Employee Stock Purchase Plan, all as described above, will constitute issuances of securities within the purview of Section 204 of the Federal Power Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issues here involved are regulated by a State commission within the meaning of Section 204(f) of the Act; and the proposed issuances of Common Stock, as described above, are, therefore, not exempt by virtue of that subsection from the requirements of Section 204 of the Act.

(4) Good cause has been shown and it is necessary and appropriate for the purposes of the Federal Power Act that the Commission's order issued May 11, 1960, 23 FPC 684, in Docket No. E-6933, be amended as hereinafter provided.

(5) The proposed issuance of Common Stock, as described above, is exempt from the competitive bidding requirements of Section 34.1a of the Commission's Regulations under the Federal Power Act by reason of Paragraph 34.1a(a)(1) thereof.

(6) Under the circumstances of this case, sufficient cause has been shown for exempting the proposed issuance and sale of Common Stock under the Amended Employee Stock Purchase Plan from the competitive bidding requirements of Section 34.1a(b) and (c) of the Commission's Regulations under the Federal Power Act.

(7) The proposed issuance and sale of Common Stock, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility, and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

The Commission orders:

(A) The proposed issuance of 2,127,808 additional shares of Common Stock, no par value, to accomplish a 3-for-2 split of presently outstanding Common Stock and the proposed issuance and sale of up to 140,861 shares of Common Stock, no par value pursuant to the provisions of the Amended Employee Stock Purchase Plan, as described above, are hereby authorized, subject to the provisions of this order.

(B) The terms of the Commission's order issued May 11, 1960, in Docket No. E-6933, are hereby amended to authorize the issuance and sale of up to 140,861 shares of Common Stock, no par value, under Applicant's Amended Employee Stock Purchase Plan, in lieu of the 93,901 shares of Common Stock, no par value, heretofore authorized to be issued and sold under the Amended Employee Stock Purchase Plan pursuant to that order.

(C) The proposed issuance and sale of up to 140,861 shares of Common Stock, no par value, under the Amended Employee Stock Purchase Plan is hereby exempted from the competitive bidding requirements of Section 34.1a(b) and (c) of the Commission's Regulations under the Federal Power Act.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever which may come before this Commission.

(E) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect of any securities to which this order relates.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

IDAHO POWER COMPANY, PROJECT NO. 1971

ORDER ON REHEARING MODIFYING AND CLARIFYING LICENSE ORDER

(Issued May 6, 1965)

This order upon rehearing modifies our order of September 15, 1964, 32 FPC 759, to make clear that the Idaho Power Company, licensee for Project No. 1971 on the Snake River in Idaho and Oregon, may be required under Article 39 of its license to coordinate its entire electric system with other systems. The order of September 15, 1964, amended the article to clarify our intent that the licensee may share in the benefits of coordination other than headwater benefits to downstream projects of the United States.

The licensee filed an application to clarify or amend Article 39 on October 4, 1963. By order of September 15, 1964, we amended the article as set forth therein and discussed some of the objections to such action which had been made by the Secretary in his comments filed on March 13, 1964. The Secretary's comments had alleged that the "purpose of the present petition [of the licensee] is to obtain payment for headwater benefits that it provides to United States Federal projects downstream." In our order of September 15, 1964, we attempted to make clear that Article 39 may not be used by the licensee to obtain payment for such headwater benefits.

On October 14, 1964, the Secretary filed application for rehearing of the order of September 15, 1964. This application requested that the Commission modify the order to: (1) require the licensee to coordinate its whole electric system, rather than merely its project, and (2) make clear that "headwater benefits" to projects of the United States include those from licensee's assured water releases as well as its incidental releases. The petition was subsequently granted for purposes of further consideration. The Secretary was permitted to intervene, and oral argument was held on February 16, 1965.

Article 39 of the license as originally issued required the licensee to coordinate "the project and its system." In amending the article to clarify our meaning with respect to the sharing of coordination benefits, the phrase "and its system" was unintentionally deleted. The licensee had not requested the deletion of this language, and in fact, since the project provides the majority of the licensee's total energy resource requirements, coordination of its project as a practical matter must entail coordination of its entire system. Therefore, we are modifying the article to restore the deleted phrase.

The issue with respect to the nature of the benefits of coordination in which the Commission indicated it will permit the licensee to share revolves around what the Commission meant when it said such sharing will not include headwater benefits. Specifically in question is whether we construe such benefits to include those hydraulic benefits received by downstream Federal projects from the assured water releases which the licensee may be required to make under Article 39 as well as those releases merely incidentally resulting from the presence of the upstream licensed developments. The Commission has held that it may require non-Federal owners of downstream projects to make payments to licensees or the United States for benefits received from assured as well as incidental water releases from headwater improvements. See: *Columbia River Basin Headwater Benefit Investigation*, 29 FPC 238 (1963); Subparagraph 11.27 (a) of the Commission's Regulations under the Federal Power Act. It is accordingly our intent to exclude from any benefit sharing we might order all hydraulic benefits to the downstream Federal projects resulting either from the existence of the upstream project or the coordination required by Article 39.

This will mean that we will order the licensee to share in: (1) all electrical benefits resulting from coordination required pursuant to Article 39, and (2) any hydraulic benefits resulting from coordination required pursuant to Article 39 to projects or developments which are not downstream from the licensed projects. Of course, our order and the license article will have no bearing on any arrangements that might be made between the licensee and any other parties for any coordination over and beyond that we might find necessary under Article 39.

Beyond this we cannot go at this time since the exact benefits of coordination and the category into which they fit with respect to sharing of the benefits cannot be determined until the actual coordination agreement is fixed.

The Commission finds:

It is appropriate and in the public interest in administering Part I of the Federal Power Act (16 U.S.C. 791–823), especially sections 10(a) and 313 thereof (16 U.S.C. 803(a) and 825(1)), that the order, issued on September 15, 1964, amending the license for Idaho Power Company's Project No. 1971 be modified as hereinafter provided.

The Commission orders:

(A) The order, issued on September 15, 1964, amending the license for Idaho Power Company's Project No. 1971, is modified to provide that Article 39 of the license read:

Article 39. The licensee shall, after notice and opportunity for hearing, coordinate the operation of the project and its system, electrically and hydraulically, with such other power systems and in such manner including the construction of additional transmission facilities as the Commission may direct in the interest of maximizing power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the licensee as the Commission may order.

(B) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgement of the acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

JERSEY CENTRAL POWER & LIGHT COMPANY AND PUBLIC SERVICE ELECTRIC AND GAS COMPANY, PROJECT NO. 2309

ORDER APPROVING TRANSFER OF INTEREST AND AMENDING LICENSE (MAJOR)

(Issued May 6, 1965)

Joint application was filed on February 5, 1965, pursuant to Sections 6 and 8 of the Federal Power Act by Jersey Central Power & Light Company (Jersey

Central), a New Jersey corporation, and Public Service Electric and Gas Company (Public Service), also a New Jersey corporation, for Commission approval of the transfer of 50% of the former's interest in the license for the above-designated project to the latter, and amendment of the license for Project No. 2309 so as to include Public Service as a co-licensee of the project with Jersey Central. The license for Project No. 2309 was issued to the Jersey Central Power & Light Company on March 14, 1963. The project is known as the Yards Creek project and is located on Yards Creek, a tributary of the Paulins Kill, which is a tributary of the Delaware River, a navigable water of the United States.

The application is the result of an agreement which the Applicants entered into on December 30, 1964, in which Jersey Central agreed to sell and Public Service agreed to purchase an undivided 50% interest in the Yards Creek Pumped Storage project which is now under construction by Jersey Central, and in all other Kittatinny Mountain project properties which are owned by Jersey Central on the date of the consummation of the sale of the Yards Creek facilities.

Public notice of the application has been given. No protests or petitions to intervene have been received.

The Commission finds:

(1) The proposed transferee is a corporation organized under the laws of the State of New Jersey, is domesticated in the State of New Jersey, and has submitted satisfactory evidence of compliance with the requirements of all applicable state laws as necessary for the operation of Project No. 2309.

(2) Approval of the transfer, upon compliance with the conditions set forth herein, of 50% of the interest in the license for Project No. 2309 to the proposed transferee will not be inconsistent with the public interest.

(3) The license for Project No. 2309 further amended as hereinafter provided is in the public interest.

The Commission orders:

(A) The transfer of 50% of the interest in the license for the project designated in finding (1) above from Jersey Central Power & Light Company to Public Service Electric and Gas Company is hereby approved, effective as of the effective date of the transfer referred to above; subject to Section 9.3 of the Commission's Regulations under the Federal Power Act and subject to the further condition that the net investment in the project shall not be increased on account of the transfer; provided that the transferee shall be subject to the conditions and obligations of the license and to all of the provisions of the Act to the same extent as though it were the original licensee for the project.

(B) The Commission's order of March 14, 1963 (29 FPC 474) issuing a license for Project No. 2309 is hereby further amended by inserting in the ordering paragraph (B) immediately after "Jersey Central Power & Light Company" the words "and Public Service Electric and Gas Company".

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Federal Power Act, and failure to file such an application shall constitute acceptance of the license for the project designated in finding (1) above by Jersey Central and Public Service. In acknowledgement of the acceptance of such license, this instrument shall be signed for Jersey Central and Public Service, and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP63-174

ORDER DENYING APPLICATION FOR REHEARING AND PETITIONS FOR RECONSIDERATION

(Issued May 6, 1965)

On March 15, 1965, 33 FPC 545, the Commission issued its Opinion No. 455 and order granting permanent certification to Natural for certain facilities previously constructed under temporary certification, resulting in an increase in the net allocation of gas delivered to various customers in the greater Chicago market area.

The Commission imposed a condition in the order that Natural obtain, and file with the Commission reports from its distributor customers of the "Monthly Volumes of Gas delivered to their respective customers for boiler fuel purposes." In its application for rehearing, and in substantially identical petitions for reconsideration, filed by the intervening customers, Natural, North Shore Gas Company, Peoples Gas Light and Coke Company, Northern Indiana Public Service Company and Iowa Electric Light and Power Company, request reconsideration of the above-referenced condition.

Natural and its customers contend that the condition is unnecessary, and is, in fact directed to local utilities and municipalities served by Natural, none of which are subject to the jurisdiction of the Commission; that the ability of Natural and its customers to comply with the terms of the condition is uncertain; and that the condition is inappropriate in that the customers are subject to regulation by the State Commissions and by those Commissions alone.

The condition in question was adapted from an earlier order of the Commission in the matter of *Transcontinental Gas Pipe Line Corporation*, Docket No. G-1783, issued December 15, 1955, 14 FPC 436. Transco there was required to submit reports to the Commission concerning the volumes of gas delivered to the Duke Power Company for boiler fuel purposes. In that case, the sales to Duke were unquestionably nonjurisdictional.

There can be no dispute as to our responsibility or authority to consider such end uses in a Section 7 proceeding. Indeed the parties here do not contend that the Commission is without authority to impose the condition here at issue. Rather they contend that the condition is unnecessary and that their ability to comply therewith is uncertain.

We do not concur that the condition is unnecessary. Its purpose is to permit us to keep apprised of the nature and extent of boiler fuel usages of gas in the Chicago market area and its effects on Natural's interstate system. The fact of local regulation is not germane to the interstate aspects of such matters.

Nor do we concur that the ability of Natural and its customers to comply with the terms of the condition is uncertain. It is apparent from the matters at issue in the original proceeding that our interest in the boiler fuel consumption is limited to those usages where fuel is burned in boilers for the generation of steam for electric power generation.

For the reasons herein discussed, we find that the application for rehearing and the petitions for reconsideration should be denied.

The Commission finds:

The grounds for rehearing set forth in the application for rehearing and petitions for reconsideration filed in this proceeding present no facts or legal principles which would warrant any change or modification in the Commission Opinion No. 455 and accompanying order.

The Commission orders:

The applications for rehearing and petitions for reconsideration filed herein by Natural Gas Pipeline Company of America, as joined in by Iowa Electric Light and Power Company, and Northern Indiana Public Service Company, and the petitions for reconsideration filed herein by Peoples Gas Light and Coke Company, and North Shore Gas Company, are hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP65-238

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 6, 1965)

On February 11, 1965, Natural Gas Pipeline Company of America (Applicant) filed in Docket No. CP65-238, an application pursuant to Section 7(c) of the Natural Gas Act for a certificate authorizing (1) the construction and operation of two new delivery points on its main transmission line in Keokuk and Washington Counties, Iowa, and (2) the sale and delivery of natural gas to an existing customer, Iowa Electric Light and Power Company, all as more fully set forth in the application.

Applicant proposes to construct and operate (a) two, 2-inch side taps, approximately 200 feet of 2-inch lateral and a meter station to sell natural gas to Iowa Electric Light and Power Company (Iowa Electric) for resale in the City of Marengo and the towns of North English and Williamsburg, Warren County, Iowa and South English, Keokuk County, Iowa, to be known as the English (Marengo) side tap and meter, and (b) one, 2-inch side tap approximately 200 feet of 2-inch lateral, and a meter station to sell natural gas to Iowa Electric for resale in the town of Kalona, Washington County, Iowa, to be known as the Kalona side tap and meter. The volumes of natural gas will be delivered to Lateral Gas Pipeline Company (Lateral), a wholly owned subsidiary of Iowa Electric for transportation[1] to points of distribution of Iowa Electric in or near Williamsburg, South English, North English, Marengo, and Kalona, Iowa, and are estimated on an annual and peak day basis for the initial three years to be:

	First year	Second year	Third year
Williamsburg	52,048 219	60,526 380	68,735 453
South English	17,097 103	17,448 153	17,825 156
North English	48,548 139	53,465 239	58,089 282
Marengo	87,120 325	99,279 548	110,649 652
Kalona	49,830 164	56,442 293	63,279 349

---

[1] Transportation facilities of Lateral were authorized by the Commission in Docket No. CP65-204 on March 29, 1965, 33 FPC 645.

The total estimated cost of the proposed facilities is $27,100, and will be defrayed from Applicant's current funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 4, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 7, 1958, in Docket No. G-9966 (20 FPC 694).

(2) The proposed construction and operation of facilities and the sale and delivery of natural gas by Applicant to Iowa Light and Power Company as hereinbefore described, and as more fully described in the application, in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and the sale and delivery of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, Natural Gas Pipeline Company of America, authorizing the construction and operation of facilities and the sale and delivery of natural gas to Iowa Electric Light and Power Company, as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) Applicant and Iowa Electric Light and Power Company shall execute a service agreement in accordance with the Commission Regulations reflecting the new delivery points and the terms and conditions of the deliveries of natural gas thereto, and file the same with the Commission within 30 days after the issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP65-225

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 6, 1965)

On January 25, 1965, Northern Natural Gas Company (Applicant) filed in Docket No. CP65-225 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and the sale of natural gas, all as more fully set forth in the application.

Applicant requests authorization to construct and operate 7.9 miles of branch line and measuring facilities for the sale of a total of 570 Mcf of natural gas per day in the third year to two distributors for resale in four communities located in the vicinity of Minneapolis, Minnesota. Minneapolis Gas Company (Minneapolis) will serve Albertville, Rogers and St. Michael, Minnesota; and North Central Public Service Company (North Central) will serve Dayton, Minnesota.

Minneapolis and North Central have received appropriate franchises for their operations in the communities involved.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 4, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-280 (3 FPC 967).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed sales of natural gas are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid construction and operation of facilities and sales of natural gas are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, Northern Natural Gas Company, authorizing the construction and operation of facilities and sales of natural gas hereinbefore described, as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the sales of natural gas shall be undertaken, as provided by paragraph (b) of Section 157.20 of the Regulations under the Natural Gas Act, within one year from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

ORDER ESTABLISHING NATIONAL POWER SURVEY INDUSTRY ADVISORY COMMITTEE ON UNDERGROUND TRANSMISSION

(Issued May 10, 1965)*

The Federal Power Commission is directed by Section 202(a) of the Federal Power Act (16 U.S.C. 792–825r) to promote and encourage voluntary interconnection and coordination of the nation's electric power facilities in the interest of economy and conservation, and is authorized by Section 311 of the Act to conduct broad investigations covering all aspects of the entire power industry. In order to accomplish the objectives of the National Power Survey issued by the Commission on December 12, 1964, more effectively and in accordance with the Executive Order No. 11007 of February 26, 1962 (27 F.R. 1875) relating to the Formation and Use of Advisory Committees, we have concluded that it is in the public interest that a National Power Survey Industry Advisory Committee on Underground Transmission be, and hereby is, established.

1. *Purpose.* The Committee shall investigate the state of the art of underground transmission both by alternating and direct current and shall prepare a report thereon. The report will include an outline of the technical and economic problems involved in such transmission, the progress being achieved in overcoming such problems, and such recommendations as the Committee may deem advisable with respect to acceleration of progress in research and development of underground transmission. Such report shall be prepared and submitted as soon as practicable and if possible no later than September 1, 1965.

2. *Selection of Committee Members.* All Committee members and alternates shall be selected by the Chairman of the Commission with the approval of the Commission.

3. *Conduct of Meetings.* The Chairman of the Commission, or in his absence, the Acting Chairman, or any full-time employee of the Commission designated by the Chairman or Acting Chairman of the Commission, shall act as chairman of Committee meetings and shall be responsible for opening and conducting meet-

---

*Published in the Federal Register on May 14, 1965 (30 F.R. 6667).

ings and for adjourning meetings when, in his judgment, adjournment is in the public interest.

4. *Minutes.* The Chairman of the Commission having made a finding that maintenance of a verbatim transcript would be impracticable and not in the public interest, there shall be kept by the Secretary of the Committee, in lieu thereof, a record of persons present, a description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the Committee.

5. *Secretary of the Committee.* The Chairman of the Commission shall appoint a Secretary of the Committee from the Commission staff who shall be responsible for preparing summary minutes of all Committee meetings, preparing agenda, notifying members of the meetings, and maintaining all records related to organization, membership and operations of the Committee. The Secretary or his alternate shall be present during all meetings and shall certify the accuracy of all minutes.

6. *Location and Time of Meetings.* Meetings will convene at the call of the Chairman or Acting Chairman of the Commission at the Office of the Federal Power Commission, located at 441 G Street, N.W., Washington, D.C. 20426, unless otherwise directed. Ordinarily, meetings will be held during the regular working hours of the Federal Power Commission.

7. *Report of the Committee.* The report of the Committee will be presented to the Commission in written form. The content shall be limited to matters relating to those set forth in Item 1, *Purpose.*

8. *Duration of the Committee.* The Committee shall terminate upon submission of its report and in any event not later than two years subsequent to its date of establishment, unless the Commission determines in writing, not more than 60 days prior to the expiration of such two-year period, that continued existence of the Committee is in the public interest.

OPINION NO. 459

SOUTH CAROLINA ELECTRIC & GAS COMPANY, DOCKET NO. E-7146

MEMORANDUM OPINION AND ORDER DENYING APPLICATION FOR REHEARING

(Issued May 11, 1965)*

Syllabus

1. The Savannah River is a navigable water of the United States. P. 985.
2. Section 1 of General Dam Act of 1910, incorporated by reference in special legislation, prohibited construction or commencement of construction of a dam prior to issuance of a War Department permit. P. 986.
3. Respondent could not rely on permit for its right to operate project and at same time contest permit. P. 986.
4. Contention that term expenditures "upon which dam" as used in Section 4 of General Dam Act, means something different from actual construction expenditures rejected as not in accord with plain language of provision and overall context of such Act which relates to actual construction. P. 987.
5. It has long been settled that even where language of statute is clear on the surface recourse may be had to its legislative history. P. 987.
6. Respondent's predecessors did not qualify under exception to 50-year term because plans for dam had not been approved and permit issued by War

---

* Petition for Review pending in USCA for the Fourth Circuit, No. 10149.

Department before passage of 1910 amendment; therefore no expenditures could have been legally made on dam. PP. 987–988.

7. Nothing urged on rehearing would justify modification of Commission holding that plain language and legislative history of exception indicate subject expenditures do not exempt permittee from 50-year limitation. P. 988.
8. Permit is not only contemporaneous record of events which it recounts but Respondent, in accepting its benefits and obligations, waived right to dispute its terms. P. 988.
9. Commission *denies* rehearing of order requiring Respondent to secure a license for its Stevens Creek hydroelectric project.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

On December 30, 1963, the Commission issued an order (30 FPC 1630) requiring the South Carolina Electric & Gas Company (Respondent) to show cause why it should not apply for and secure a license for its Stevens Creek hydroelectric project in Georgia and South Carolina. The project is on the Savannah River, about 8.7 miles upstream from Augusta, Georgia. The Savannah River is a navigable water of the United States. See *United States* v. *Twin City Power Co.*, 350 U.S. 222.

The order to show cause stated that a War Department permit has been issued to Respondent's predecessors on July 20, 1910, authority to issue it stemming from: (1) a special act, approved August 5, 1909 (36 Stat. 180), and extended March 5, 1912 (37 Stat. 72); the General Dam Act of 1906 (34 Stat. 386), as amended June 23, 1910 (36 Stat. 593). The order further recited that it appeared that the fifty-year term prescribed by the General Dam Act of 1910 had expired and that the Company was operating and maintaining the Stevens Creek project works without a valid federal permit issued prior to June 10, 1920 or a license under the Federal Power Act, in violation of Section 23(b) of that Act (16 U.S.C. 817).

On February 20, 1964, we granted the Respondent a continuance until April 29, 1964 on its representation that it needed the time to reply adequately. Under the pertinent section of our Rules of Practice and Procedure (18 CFR 1.9(c)) such answers are required to be drawn so as specifically to admit or deny the allegations, "set forth the facts upon which respondent relies," and state concisely matters of law relied upon.

In its answer, the Respondent stated that it qualified under the exception to the fifty-year limitation on War Department permits enacted in 1910. The fifty-year limitation, and the exception to it on which the Respondent relied, are as follows:

> * * * the authority granted under or in pursuance of the provisions of this Act shall terminate at the end of a period not to exceed fifty years from the date of the original approval of the project under this Act, unless sooner revoked as herein provided or Congress shall otherwise direct: *Provided, however*, That this limitation shall not apply to any corporation or individual heretofore authorized by the United States, or by any State, to construct a dam in or across a navigable waterway, upon which dam expenditures of money have heretofore been made in reliance upon such grant or grants. § 4, 36 Stat. 593, 595 (1910).

The factual portion of Respondent's answer was simply that prior to cut-off date, June 23, 1910, it had expended "substantial sums." The answer also alleged that "its War Department Permit for the Stevens Creek project is perpetual." We noted in our order of March 18, 1965, 33 FPC 584, requiring Respondent to apply for and secure a license, that the Respondent did not claim that the expenditures were "upon which dam" as the exception requires. Section 1 of the General Dam Act of 1910, incorporated by reference in the special legislation,[1] prohibited construction or the commencement of construction of a dam prior to the issuance of a War Department permit. Respondent's War Department permit was not issued to its predecessors until after the enactment in 1910 of the time limit on War Department permits. Commencement of construction before this time would have been illegal.

In this connection we took official notice of Respondent's permit, and its amendments, which came before us in the headwater benefits case of *South Carolina Electric & Gas Co.*, 29 FPC 624, Op. No. 384, Docket No. E-6468, March 28, 1963, *aff'd sub nom. South Carolina Electric & Gas Company* v. *F.P.C.*, 338 F. 2d 898 (CA4). The permit as amended and supplemented reveals that there was no construction work on the dam until well after the 1910 amendment of the General Dam Act. The supplemental approval by the War Department, issued November 16, 1912, provided:

> That whenever said company shall commence the actual construction of said dam, lock or appurtenances, as provided under this permit, such commencement shall be construed as an acceptance of this permit by said company and of all the conditions therein imposed.

The permit shows that construction did not start until after 1912. The Respondent does not contest this nor could it, because the Company relies on the permit for authority to maintain and operate the project. The Respondent could not rely on the permit for its right to operate the project and at the same time contest the permit. See *Central Nebraska Public P. & I. Dist.* v. *F.P.C.*, 160 F. 2d 782, 784 (CA8), cert. denied, 332 U.S. 765.

We pointed out in our order of March 18, 1965 requiring application for a license that it was clear that no actual construction expense, in the sense of the exemption, had been incurred before June 23, 1910 and that this conclusion was compelled by legislative history and plain language. Purchase of land or flowage rights would not exempt a permittee. A primary policy of the General Dam Act was, in the language of President Theodore Roosevelt, "that natural resources should not be held in undeveloped condition either for speculation or other reasons." We quoted this language from the Rainy River veto message in our order of March 18, 1965 because it was a specific and important part of the legislative history of the amendment of 1910, being referred to by the member in charge of the bill.

While in its application for rehearing of our March 18, 1965 order, the Company does not contest our finding that the project was not actually constructed until after 1912, Respondent does state that it made expenditures of money *upon the dam* prior to June 23, 1910. By August 1909 the Respondent's predecessors had, it seems, purchased options on lands bordering the Savannah River[2] The Respondent also states that it is prepared to show:

---

[1] The special act of 1909, consenting to the construction of a dam at Stevens Creek, incorporated by reference the General Dam Act of 1906 (34 Stat. 386). By the specific terms of Section 6 of the General Dam Act of 1906, Congress made such consents to dam construction subject to later amendments. In *South Carolina Electric & Gas Co.* v. *F.P.C.*, 338 F. 2d 898, 902 (CA4-1964), the Court, holding the 1910 General Dam Act amendment specifically applicable to South Carolina's project, stated "* * * [The special act of 1909] * * * authorized construction 'in accordance with the provisions of' the General Dam Act. Because of the reservation in that Act, the permit was amenable to the Act's amendment on June 23, 1910, 36 Stat. 593."

> * * * that after the Stevens Creek Dam Project was authorized, preparation of engineering plans for the dam was undertaken; and that expenditures prior to June 23, 1910 on the dam were necessary for such preparation in order to submit the plans, as was done on June 30, 1910, to the War Department for approval

Respondent contends that the term expenditures "upon which dam," as used in Section 4 of the General Dam Act, means something different from actual construction expenditures. The Company refers us to Instruction 3(13) of our Uniform System of Accounts, which includes as part of the construction cost of a hydroelectric project "engineering services." The argument runs that by definition this would include engineering advice in preparing an application for a War Department permit. This contention does not accord with the plain language of the provision and the over-all context of the General Dam Act which relates to actual construction. Thus Section 4 provides that a Congressional authorization would cease and be null and void unless the "actual construction of the dam" was commenced within one year and completed within three years from the enactment of a special act. A prohibition in terms of "actual construction of the dam" certainly sheds light on the meaning of an exemption increasing a grant already liberal. Section 1, which forbids a dam to be "built or commenced" in navigable waters without a War Department permit, also supports this conclusion.

Even if the term expenditures "upon which dam" in Section 4 was uncertain, the "uncertainty of the Act in this regard justifies, indeed requires, application of the rule that 'all federal grants are construed in favor of the Government lest they be enlarged to include more than was expressly included.'" *Northwest Paper Co.* v. *F.P.C.*, 344 F. 2d 47 (CA8 No. 17,679), April 7, 1965, citing *United States* v. *Grand River Dam Authority*, 363 U.S. 229, 235.

Despite the foregoing, the Respondent urges that we cannot resort to the legislative history of the General Dam Act. It has long been settled that even where the language of a statute is clear on the surface recourse may be had to its legislative history.[3] The meaning of the exception derived from its terms and context is also clarified by the general aims of the statute. Two of the most important were the requirement that permits be for a term only and that the exercise of the privilege of using the water resources of navigable streams be utilized promptly. Appellant states that it was not as dilatory as the permittee in the Rainy River case. It may be observed, however, that in the instant case a War Department permit could have been issued prior to the 1910 amendment of the General Dam Act had respondent's predecessors been prepared to proceed. But both the permit and the statute extending the time for completion shows an inability to construct the project within the time originally contemplated in the 1909 special act. The permit was not actually issued until July 20, 1910 and any construction prior to that time would have been in violation of the River and Harbor Act of 1899 (33 Stat. 401 and 403) and the aforesaid statutes of 1906 and 1909. Thus Respondent's predecessors did not qualify under the exception to the fifty-year term because plans for the dam had not been approved and a permit had not been issued by the War Department before the passage of the 1910 amendment, and therefore no expenditures could have been legally made upon the dam.

---

[2] For "indications of expenditures which had been made on the Project" prior to June 23, 1910, Respondent refers us to the statements of Congressman Bartlett, of Georgia on August 2, 1909. It appears from this reference that Congressmen Bartlett and Mann, explaining the special act on the floor before its passage, stated that the individuals who were the Respondent's predecessors had invested about seventy-five to ninety thousand dollars in land options. 44 Cong. Rec. 4821–23 (1909).

[3] See *United States* v. *American Trucking Ass'n*, 310 U.S. 534, 543–4.

It has been seen that, in addition to the purchase of land options by its predecessors, the Respondent is prepared to prove that it spent money for engineering advice in preparing its application for a War Department permit and maintains these expenditures should be considered as made upon the dam prior to June 23, 1910. As we indicated in our previous order, whether such promotional and preparatory expenditures prior to the issuance of a War Department permit would exempt anyone from the fifty-year limitation on such permits is purely a question of law. Nothing that Respondent urges on rehearing would justify a modification of our holding that the plain language of the exception and its legislative history clearly indicate that such expenditures do not exempt a permittee from the fifty-year limitation.

The first order in this proceeding required the Respondent to show cause, under oath, why, in view of the expiration of the fifty-year term of its War Department permit, it should not apply for and secure a license under Section 4(e) of the Federal Power Act. Under Section 1.9(c) of our Rules of Practice and Procedure a respondent must set forth, among other things, the specific facts upon which he relies. These facts, considered with the contents of the Respondent's War Department permits, show that the permit has expired.

Respondent claims it was erroneous for us so to find in the absence of a hearing, citing *Ohio Bell Telephone Co.* v. *Public Utilities Commission of Ohio*, 301 U.S. 292. The case is inapposite because there the Court found that the commission not only improperly expanded the doctrine of official notice but relied for decision on evidential facts which it refused to disclose. In contrast the facts that we officially notice are contained in Respondent's War Department permit and its amendments. These materials were involved in a headwater benefits case in which the respondent participated. See *South Carolina Electric & Gas Co.* v. *F.P.C.*, 338 F. 2d 898 (CA4).

The permit is not only a contemporaneous record of the events which it recounts but Respondent, in accepting its benefits and obligations waived the right to dispute its terms. Further the permit and its supplements constitute official entries of a department which are "admissible to prove the act, transaction or occurrence as a memorandum of which the same were made or kept." 28 U.S.C. 1733(a).

In addition to the *Ohio Bell Telephone* case the Respondent relies on *Rochester Gas and Electric Corp.*, v. *F.P.C.*, 344 F. 2d 594 (CA2 No. 29180), April 6, 1965. That case dealt with Section 5(d) of the Administrative Procedure Act which makes available to us, in our discretion, the use of a declaratory order to terminate a controversy or remove uncertainty. It was held that we may decide a case on statements contained in a petition for a declaratory order if they are sufficient. The Court affirmed our order requiring the respondent to apply for a license covering three of four hydroelectric developments on the Genesee River but vacated our order as to the development farthest upstream. The Court did not hold that we may not amplify such admissions by official notice in an appropriate case. It stated that, under the circumstances, the Court itself would not take judicial notice of factual matters which had not been brought to our attention.

In short, Respondent's admissions and its own permit show that the latter has expired. In such a situation the Second Circuit decision in *Fay* v. *Douds*, 172 F. 2d 720 (CA2) is more applicable than its *Rochester* case. In *Fay* v. *Douds* the Court, speaking through Chief Judge Learned Hand, stated:

> Upon such a record the defendant's denial of any hearing was right. Neither the statute, nor the Constitution, gives a hearing where there is no issue to decide * * * The Constitution protects procedural regularity, not as an end in itself, but as a means of defending substantive interests. Every summary judgment denies a trial upon issues formally valid. Where, as here, the evidence on one side is unanswerable, and the other side offers nothing to match or qualify it, the denial of a trial invades no constitutional privilege. *Id.* at 725.

The Commission finds:

The assignments of error and grounds for rehearing set forth in the application for rehearing filed in this proceeding present no facts or legal principles which would warrant any change in the Commission's order issued March 18, 1965, requiring South Carolina Electric & Gas Company to apply for and secure a license.

The Commission orders:

(A) The application for rehearing filed by South Carolina Electric & Gas Company on April 16, 1965, is hereby denied.

(B) Our order of March 18, 1965, requiring South Carolina Electric & Gas Company to apply for and secure a license, is hereby stayed until ninety days after the entry of a final order after judicial review, if such review is taken.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

ALGONQUIN GAS TRANSMISSION COMPANY AND TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP65-217

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 12, 1965)

On January 15, 1965, Algonquin Gas Transmission Company (Algonquin) and Tennessee Gas Transmission Company (Tennessee) filed in Docket No. CP65-217 a joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and the exchange of natural gas, all as more fully set forth in the application.

Tennessee proposes to construct and operate a side valve and meter station adjacent to its transmission line in Milford, Connecticut, and to deliver for the account of Algonquin up to 200 Mcf of natural gas per hour to New Haven Gas Company (New Haven), an existing customer of Algonquin, pursuant to an agreement between Tennessee and Algonquin dated November 1, 1964. Algonquin will return equivalent volumes to Tennessee at any of five existing points of interconnection between their systems.

No increase in Algonquin's authorized contract demand with New Haven is requested. The gas to be received by New Haven through the proposed delivery point is presently being taken through existing delivery points for service by Algonquin to New Haven.

The estimated cost of the side valve to Tennessee is $2,360, and will be financed with general funds. New Haven will own the meter station by reimbursing

Tennessee for the cost of constructing it. Tennessee will rent the station for one dollar per year, and Algonquin will pay Tennessee $167 per month for its operation and maintenance.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 11, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Algonquin Gas Transmission Company, a Delaware corporation having its principal place of business in Boston, Massachusetts, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order accompanying Opinion No. 206 issued March 14, 1951, in Docket No. G-1319 (10 FPC 35).

(2) Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued July 15, 1947, in Docket No. G-910 (6 FPC 777).

(3) The proposed construction and operation of facilities and exchange of natural gas hereinbefore described, as more fully described in the application in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The aforesaid proposed construction and operation of facilities and exchange of natural gas are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Algonquin and Tennessee are able and willing properly to do the acts and perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(6) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Algonquin's and Tennessee's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is hereby issued to Algonquin Gas Transmission Company and Tennessee Gas Transmission Company, authorizing the construction and operation of facilities and exchange of natural gas hereinbefore described, as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Algonquin's and Tennessee's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation and the exchange of natural gas shall be undertaken, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

GULF STATES UTILITIES COMPANY, DOCKET NO. E-7217

ORDER AUTHORIZING ISSUANCE OF COMMON STOCK

(Issued May 12, 1965)

Gulf States Utilities Company (Applicant), incorporated under the laws of the State of Texas and doing business in the States of Texas and Louisiana with its principal business office at Beaumont, Texas, filed an application on April 2, 1965, for an order pursuant to Section 204 of the Federal Power Act, authorizing the issuance of 10,373,664 additional shares of Common Stock without par value, to effect a two-for-one split of the outstanding Common Stock of Applicant.

Applicant proposes to amend its Articles of Incorporation to change each of the presently authorized 20,000,000 shares of Common Stock without par value, issued and unissued, into 2 shares of Common Stock, without par value, thereby increasing to 40,000,000, the total authorized shares of Common Stock. The 10,373,664 shares for which authorization is sought will be the number of shares required for pro-rata issuance to the holders of record of a like number of shares of Common Stock, without par value, at the time the aforesaid amendment becomes effective which is expected to be at the close of business on May 27, 1965.

According to the Applicant, the purposes of the issuance of the additional shares of Common Stock, without par value, resulting from the proposed split up of such stock are to broaden the market and increase the salability of Applicant's Common Stock by establishing a market price per share at a lower level. Applicant expects that the proposed action will cause its Common Stock to be more attractive to new investors and will benefit Applicant whenever it becomes necessary to issue additional Common Stock to finance corporate investments.

Written notice of the application has been given to the Louisiana Public Service Commission, the Texas Railroad Commission, and to the Governor of each of those States. Notice has also been given by publication in the Federal Register on April 14, 1965 (29 F.R. 4775), stating that any person desiring to be heard or to make any protest with reference to the application, should file petitions or protests on or before April 30, 1965, with the Federal Power Commission, Washington, D.C., 20426. No protest, petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued December 20, 1962, *Gulf States Utilities Company*, Docket No. E-7074 (28 FPC 1077).

(2) The proposed issuance of 10,373,664 shares of Common Stock to holders of Applicant's outstanding Common Stock will constitute an issuance of securities within the purview of Section 204 of the Federal Power Act.

(3) The proposed issuance of Common Stock, as described above, is exempt from the competitive bidding requirements of Section 34.1a of the Commission's Regulations under the Federal Power Act by reason of paragraph 34.1a (a) (1) thereof.

(4) The proposed issuance of Common Stock as hereinafter authorized will be for a lawful object within the corporate purposes of Applicant and compatible with the public interest which is appropriate for and consistent with the proper performance of service by Applicant as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

The Commission orders:

(A) The proposed issuance of Common Stock, upon the terms and conditions and for the purposes specified in the application, as described above, are hereby authorized, subject to the provisions of this order.

(B) This authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever which may come before this Commission.

(C) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect of any securities to which this order relates.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP65-228

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 12, 1965)

On January 29, 1965, Northern Natural Gas Company (Applicant) filed in Docket No. CP65-228 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities in order to sell and deliver natural gas, on a firm and interruptible basis, to Iowa Public Service Company (Public Service), all as more fully set forth in the application in this proceeding.

Specifically, Applicant proposes to construct and operate measuring and regulating facilities to establish a new delivery point in Dakota County, Nebraska, for the delivery of natural gas to Public Service. Public Service will resell approximately 176,300 Mcf of said gas per year on a firm and interruptible basis to Iowa Beef Packers, Inc. (Iowa Beef) for use in the latter's proposed meat processing plant near Dakota City, Nebraska. Public Service will sell and deliver 32 Mcf per day on a firm basis from its existing contract demand with Applicant. Interruptible volumes will be utilized by Iowa Beef for steam heating the plant's main building; firm volumes will be used for water heating and limited space heating.

The total estimated cost of the proposed facilities is $19,850, which cost will be financed with cash on hand. Public Service will reimburse Applicant the actual cost of facilities.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 11, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-280 (3 FPC 967).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural

gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sale by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) The certificate issued hereinafter is granted on the express condition that the interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Northern Natural Gas Company, to construct and operate the proposed facilities and to sell and deliver 32 Mcf of natural gas per day, on a firm basis, and to sell and deliver natural gas, on an interruptible basis, to Public Service, as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the sale and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date on which this order issues.

(D) The certificate issued hereby is granted on the express condition that the interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

THE OHIO FUEL GAS COMPANY, DOCKET NO. CP65–247

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 12, 1965)

On February 19, 1965, The Ohio Fuel Gas Company (Applicant), filed in Docket No. CP65–247 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of 11.5 miles of 24-inch O.D. pipeline extending Applicant's Line L-3100 northward from its present terminus in Knox County, Ohio, looping an additional section of Line L-2450 between its Treat and Weaver Compressor Stations, all as more fully set forth in the application.

The proposed facilities will enable Applicant to maintain adequate storage input in its Weaver Storage Area during the summer of 1965 and thereafter, and to provide adequate service to its northern markets during the winter of 1965–66, and thereafter.

The estimated cost of Applicant's proposed construction is $975,000, and will be financed through the issuance and sale of promissory notes or common stock to The Columbia Gas System, Inc., parent company of Applicant.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 11, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, The Ohio Fuel Gas Company, an Ohio corporation having its principal place of business in Columbus, Ohio, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of August 21, 1945, in Docket No. G-371 (4 FPC 1033).

(2) The facilities hereinbefore described and as more fully described in the application and exhibits in this proceeding, will be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation of natural gas are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities is required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, The Ohio Fuel Gas Company, authorizing the construction and operation of facilities as more fully described in the application in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

COLORADO INTERSTATE GAS COMPANY, DOCKET NO. CP65-292

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 13, 1965)

On March 19, 1965, Colorado Interstate Gas Company (Applicant) filed in Docket No. CP65-292 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1965 and the operation of certain natural gas facilities for the sale of natural gas to existing distributors for resale, all as more fully set forth in the application in this proceeding.

Applicant proposes to construct during calendar year 1965 a maximum of 5 new meter stations at new delivery points and a maximum of 15 mainline or lateral taps in order to transport and sell natural gas previously authorized under certificates for transportation or sale to existing distributors at rates on file with the Commission.

Applicant states that natural gas deliveries to any one customer through the proposed facilities will not exceed 100,000 Mcf annually, and that such gas will not be used for boiler fuel purposes.

The total estimated cost of the proposed facilities under this application will not exceed $115,000, which cost will be financed with current working funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 11, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Colorado Interstate Gas Company, a Delaware corporation having its principal place of business in Colorado Springs, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of June 5, 1945, in Docket No. G-294 (4 FPC 936).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and sale of natural gas in interstate commerce and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(6) The authorization hereinafter granted should be limited to construction during the calendar year 1965 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $115,000, with the total deliveries to any one customer not to exceed a maximum of 100,000 Mcf of natural gas per year.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

(8) The certificate issued hereinafter is granted on the express condition that any interruptible service authorized herein should be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Colorado Interstate Gas Company, to construct during the calendar year 1965 the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities to sell natural gas to distributors for resale as hereinafter provided.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(C) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1965 and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $115,000, with the total deliveries to any one customer limited to a maximum of 100,000 Mcf of natural gas per year.

(D) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

(E) The certificate issued hereby is granted on the express condition that any interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CONSOLIDATED GAS SUPPLY CORPORATION AND TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. CP65-268

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 13, 1965)

On March 5, 1965, Consolidated Gas Supply Corporation (Consolidated)[1] and Texas Eastern Transmission Corporation (Texas Eastern) filed in Docket No. CP65-268 a joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of natural gas facilities and the exchange of natural gas, all as more fully set forth in the application.

Consolidated proposes to construct and operate approximately 3.01 miles of 6⅝-inch pipeline extending from two wells in Somerset County, Pennsylvania to a point of connection with Texas Eastern's 20-inch and 24-inch pipeline in Somerset County, Pennsylvania, and to construct and operate a measuring station at such point, and a measuring station at each of the two wells involved.

By means of these facilities, and pursuant to an agreement between the parties dated February 25, 1965, Consolidated will deliver up to 10,000 Mcf of natural gas per day to Texas Eastern in return for substantially equal daily volumes to be returned by Texas Eastern to Consolidated at an existing point of interconnection between the two systems in Greene County, Pennsylvania, or, with prior consent of the parties, at any other point of interconnection between the systems.

Total estimated cost of Consolidated's proposed construction is $69,752, and will be financed with general funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 11, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Consolidated Gas Supply Corporation, a West Virginia corporation having its principal place of business in Clarksburg, West Virginia, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued April 27, 1943, in Docket No. G-290 (3 FPC 994).

---

[1] The application herein was filed jointly by Texas Eastern and New York State Natural Gas Corporation (New York Natural). However, by Commission order accompanying Opinion No. 448, *Hope Natural Gas Company,* 33 FPC 150, issued February 2, 1965, in Docket No. CP63-272, Hope Natural Gas Company was authorized to acquire and operate all of the jurisdictional natural gas facilities of New York Natural, and the name of the surviving corporation was changed to Consolidated Gas Supply Corporation, effective April 1, 1965, the date of consummation of the merger. Therefore, the certificate hereinafter granted will be issued to Texas Eastern and Consolidated rather than to Texas Eastern and New York Natural.

(2) Texas Eastern Transmission Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued March 30, 1949, in Docket No. G–859, *et al.*, (8 FPC 190).

(3) The proposed construction and operation of facilities and exchange of natural gas hereinbefore described, as more fully described in the application in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The aforesaid proposed construction and operation of facilities and exchange of natural gas are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Consolidated and Texas Eastern are able and willing properly to do the acts and perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Consolidated's and Texas Eastern's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is hereby issued to Consolidated Gas Supply Corporation and Texas Eastern Transmission Corporation, authorizing the construction and operation of facilities and exchange of natural gas hereinbefore described, as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Consolidated's and Texas Eastern's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation and the exchange of natural gas shall be undertaken, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CRYSTAL GAS COMPANY, DOCKET NO. CP65–194

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued May 13, 1965)

On December 24, 1964, Crystal Gas Company (Applicant) filed in Docket No. CP65–194 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Cities Service Gas Company (Cities Service) to establish physical connection of its natural gas transmission facilities with the facilities proposed to be constructed by Applicant, and to sell and deliver natural gas to Applicant for resale and distribution in Hill 'n Dale and Keystone West, Pawnee County, Oklahoma, and environs, all as more fully set forth in the application.

Applicant proposes to construct and operate a natural gas distribution system in Hill 'n Dale, and approximately 2.5 miles of 2-inch lateral pipeline extending to a point of interconnection with Cities Service's 16-inch main transmission line in Pawnee County, Oklahoma. Applicant has already installed a distribution system in the Keystone West Lake Estates development.

Applicant's estimated third year annual and peak day requirements are 9,440 Mcf and 110 Mcf of natural gas respectively.

Total estimated cost of the proposed project is $63,693.14, of which $40,214.14 represents expenditures previously made for installation of the Keystone West Lake Estates distribution system. Remaining costs will be financed with general funds.

On January 15, 1965, Cities Service filed an answer to the application herein, stating that it has no objection to the issuance by the Commission of an order as requested by Applicant.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

The Commission finds:

(1) Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G–298 (4 FPC 471).

(2) Applicant, Crystal Gas Company, a corporation organized and existing under the laws of the State of Oklahoma, is authorized to construct and operate facilities and distribute and sell natural gas as proposed.

(3) It is necessary and desirable in the public interest that Cities Service be directed to establish physical connection of its natural gas transportation facilities with the proposed facilities of Applicant and to sell and deliver natural gas to Applicant, as set forth in the application and as hereinafter ordered and conditioned.

(4) This order should be conditioned upon Applicant being prepared to receive natural gas from Cities Service, as proposed, within one year from the date on which this order issues.

(5) The requirement that Cities Service serve Applicant, as proposed, will not place any undue burden upon Cities Service nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Cities Service Gas Company be and it is hereby directed to establish physical connection of its natural gas transportation facilities with the proposed facilities of Applicant and to sell and deliver natural gas to Applicant, all as hereinbefore described and as set forth in the application.

(B) Cities Service shall report to the Commission in writing the date of commencement of service to Applicant, within ten days thereof.

(C) This order is conditioned upon Applicant being prepared to receive natural gas from Cities Service, as proposed, within one year from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

MARTHA FEATHERSTONE, ET AL., DOCKET NO. CI64-591, ET AL.; THE ATLANTIC REFINING COMPANY, DOCKET NO. CI63-576

ORDER DENYING APPLICATION FOR REHEARING

(Issued May 13, 1965)

On April 23, 1965, The Atlantic Refining Company filed an application for rehearing of our order issued March 25, 1965, 33 FPC 621, in the above-entitled proceeding. Applicant maintains that we erred in adopting the initial decision of the Presiding Examiner as our own, including the condition requiring an initial price not in excess of 15.384 cents per Mcf, and in denying its exceptions to that decision.

We have considered the assignments of error and grounds for rehearing set forth in the application and have reconsidered our order. The arguments advanced here are the same as those advanced in the exceptions and rejected by us in the order. Our conclusions as to these matters remain unchanged. No new facts or arguments are called to our attention which would be cause for granting rehearing or disturbing the original order.

The Commission finds:

The assignments of error and grounds for rehearing set forth in the application for rehearing filed in this proceeding present no facts or legal principles which would warrant any change or modification in the Commission's order.

The Commission orders:

The application for rehearing filed by The Atlantic Refining Company on April 23, 1965, is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

THE MANUFACTURERS LIGHT AND HEAT COMPANY, DOCKET NO. CP65-243

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 13, 1965)

On February 17, 1965, The Manufacturers Light and Heat Company (Applicant), filed in Docket No. CP65-243 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application on file with the Commission.

Applicant proposes to construct and operate 8.86 miles of 20-inch pipeline looping its existing 14-inch Line No. 1278 from a connection with its Eagle Compressor Station in West Vincent Township, Chester County, Pennsylvania, to a point in East Vincent Township, Chester County, Pennsylvania.

The application states that the proposed construction is necessary in order to serve the 1965–66 winter requirements of Applicant's market areas. Total estimated cost of Applicant's proposed construction is $1,020,000, and will be financed with proceeds of the sale of Applicant's notes and common stock to The Columbia Gas System, Inc., parent company of Applicant.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 11, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and the exhibits, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, The Manufacturers Light and Heat Company, a Pennsylvania corporation having its principal place of business in Pittsburgh, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 20, 1944, in Docket No. G–593, *et al.*, (4 FPC 821).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, The Manufacturers Light and Heat Company, to construct and operate the proposed facilities, as hereinbefore described, all as more fully described in the application in Docket No. CP65–243, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

MILWAUKEE GAS LIGHT COMPANY, DOCKET NO. CP65-239

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued May 13, 1965)

On February 12, 1965, Milwaukee Gas Light Company (Applicant), filed in Docket No. CP65-239 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) to establish physical connection of its natural gas transmission facilities with the facilities proposed to be constructed by Applicant, and to sell and deliver natural gas to Applicant up to 2,535 Mcf of gas in the third year for resale and distribution in the villages of Adell, Belgium, Cascade, Cedar Grove, Fredonia, Oostberg, Random Lake and Waldo, Wisconsin, all as more fully set forth in the application.

Applicant proposes to construct and operate (1) main transmission line facilities consisting of 13.9 miles of 3-inch, 6.4 miles of 8-inch and 5.5 miles of 6-inch, and regulator station facilities at an estimated cost of $665,418, and (2) distribution facilities in each of the eight villages at an estimated total cost of $639,075. Municipal franchises have been obtained from each of the eight villages. Approval of the Public Service Commission of Wisconsin was granted to Applicant on December 15, 1964.

Applicant proposes to purchase additional volumes of natural gas from Michigan Wisconsin under Michigan Wisconsin's Rate Schedule ACQ-1 to meet the requirements of the named eight villages. The volumes of natural gas necessary to meet maximum day and annual requirements for the first three years of operation are as follows:

	(Mcf at 14.73 psia)		
	First year	Second year	Third year
Maximum day	1, 542	2, 155	2, 535
Annual (includes interruptible)	397, 853	452, 486	494, 420

Michigan Wisconsin filed an answer in this proceeding on March 1, 1965, stating it had no objection to the granting of (1) the requested order for service, and (2) the construction of approximately 9.7 miles of 6-inch lateral under its so-called 10-cent formula at an estimated cost of $227,600. Three meter stations will also be constructed at a total estimated cost of $60,000.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on March 3, 1965 (30 F.R. 2738). No protest, petition to intervene, notice of intervention, or request for hearing has been filed in this proceeding.

The Commission finds:

(1) Michigan Wisconsin Pipe Line Company, a Delaware corporation having its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order dated November 30, 1946 in Docket No. G-669 (5 FPC 953).

(2) Applicant, Milwaukee Gas Light Company, a Wisconsin corporation having its principal place of business in Milwaukee, Wisconsin, is a corporation legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Michigan Wisconsin to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicant, and to sell and deliver to Applicant under a service agreement to be executed by Applicant with Michigan Wisconsin in accordance with the Commission's Regulations, up to 2,535 Mcf of natural gas on a maximum day for distribution and resale as hereinbefore described.

(4) The requirement that Michigan Wisconsin serve Applicant, as hereinafter ordered, will not place an undue burden upon Michigan Wisconsin, require it to enlarge its transportation facilities or impair its ability to render adequate service to its existing customers.

(5) Applicant should be prepared to receive natural gas from Michigan Wisconsin for distribution in the villages of Adell, Cascade, Cedar Grove, Oostburg, Random Lake, Waldo, Belgium and Fredonia, Wisconsin within one year from the date of the issuance of this order.

The Commission orders:

(A) Michigan Wisconsin Pipe Line Company be and is hereby directed to establish physical connection of its facilities with the facilites proposed to be constructed and operated by Applicant, as hereinbefore described, and to sell and deliver up to 2,535 Mcf of natural gas on a maximum day to Applicant under a service agreement to be executed by Applicant with Michigan Wisconsin in accordance with the Commission's Regulations for transportation, distribution and resale as hereinbefore described. Such service shall be rendered pursuant to Michigan Wisconsin's presently filed appropriate rate schedule.

(B) Michigan Wisconsin shall report to the Commission the date of commencement of service to Applicant within 15 days after such service begins.

(C) Applicant shall be prepared to receive service as directed herein within one year from the date of issuance of this order.

(D) Michigan Wisconsin shall file pursuant to Part 154 of the Commission's Regulations a superseding service agreement reflecting the increased services ordered herein and the new delivery points.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP65–307

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 13, 1965)

On March 29, 1965, Natural Gas Pipeline Company of America (Applicant) filed in Docket No. CP65–307 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities for the sale and delivery of natural gas, all as more fully set forth in the application on file with the Commission.

Applicant proposes to construct and operate one 2-inch side tap, approximately 200 feet of 3-inch lateral and a meter station, all in Bureau County, Illinois, for the sale of natural gas at a new delivery point to Illinois Power Company (Illinois) for resale and distribution to new customers in Dover and Malden, Bureau County, Illinois.

The application states that Illinois proposes to initiate natural gas service to the above communities from the quantities of natural gas which Applicant has heretofore been authorized to sell and deliver to it.

Total estimated cost of Applicant's proposed construction is $9,530, and will be financed with funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 11, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 7, 1958, in Docket No. G-9966 (20 FPC 694).

(2) The facilities hereinbefore described, as more fully set forth in the application and exhibits in this proceeding, are proposed to be used for the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission and the construction and operation thereof are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to the Applicant in this proceeding, authorizing the construction and operation of facilities, hereinbefore described, as more fully described in the application and exhibits in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid regulations within six months of the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP65-304

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 13, 1965)

On March 24, 1965, Northern Natural Gas Company (Applicant), filed in Docket No. CP65-304 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application on file with the Commission.

Applicant proposes to construct and operate a new delivery point in Dodge County, Nebraska consisting of measuring and regulating facilities and appurtenances, for the delivery through its Peoples' Division (Peoples) of up to 52,800 Mcf of natural gas per year on an interruptible basis to Rawhide Products, Inc. (Rawhide) for use in the latter's new alfalfa dehydration plant.

Total estimated cost of Applicant's proposed construction is $3,400. The application states that Peoples will reimburse Applicant the actual cost of constructing the facilities.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 11, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-280 (3 FPC 967).

(2) The facilities hereinbefore described, as more fully described in the application and exhibits in this proceeding will be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof and the delivery of natural gas are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and delivery of natural gas are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to the Applicant in this proceeding, authorizing the construction and operation of facilities and the transportation and delivery of natural gas to Rawhide, as hereinbefore described and as more fully described in the application and exhibits in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid regulations within six months of the date on which this order issues.

(D) The certificate issued hereby is granted on the express condition that the interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Northern Natural Gas Company for firm service to its customers.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

LELAN F. SILLIN, JR., DOCKET NO. ID-1473

ORDER DENYING AUTHORIZATION PURSUANT TO SECTION 305(b) OF THE FEDERAL POWER ACT

(Issued May 13, 1965)

Lelan F. Sillin, Jr. (Applicant), c/o Central Hudson Gas & Electric Corporation, South Road, Poughkeepsie, New York, filed an application on December 24, 1964, for authorization, pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

President and Chief Executive Officer, Director	Central Hudson Gas & Electric Corporation
Director	Fargo Manufacturing Company, Inc.

Central Hudson Gas & Electric Corporation (Central Hudson), incorporated under the laws of the State of New York, with its principal place of business in Poughkeepsie, New York, is a public utility within the meaning of that term as used in the Federal Power Act, subject to the jurisdiction of the Commission, as heretofore described and set forth in the Commission's order issued September 13, 1961 in Docket No. E-7006 (26 FPC 482).

Fargo Manufacturing Company, Inc. (Fargo), incorporated under the laws of the State of New York, with its principal place of business in Poughkeepsie, New York, is engaged in the manufacture of electrical equipment, and in the past and presently supplies Central Hudson with electrical connectors. The dollar amounts of such equipment purchased from Fargo during the past five years are as follows: 1960, $51,400; 1961, $67,400; 1962, $72,650; 1963, $87,300, and 1964, $82,000. While Central Hudson does purchase electrical connectors from other suppliers, the bulk of its purchases of this type of equipment is from Fargo, 70 percent in 1964. Mr. Sillin has no stock interest in Fargo and would receive no compensation therefrom except for nominal fees for his activities as a director.

When Congress passed the Federal Power Act in 1935, it had before it a long record of the abusive use of interlocking positions in the electric utility industry, including particularly interlocking arrangements between public utilities and underwriting firms and as between public utilities and firms supplying them with electrical equipment. As a result, Congress in Section 305(b), expressly made it unlawful for any person to hold interlocking positions of officer and director in companies falling within these categories, unless a showing could be made to the Commission upon which it could find that the future holding of such interlocking positions would not adversely affect either the public or private interests. The Section is directed to the possible future effect upon public or private interests and is not dependent upon the establishment that a person involved actually has operated in a manner inimical to the public interest. On the contrary, the Section presupposes that with the exception of companies within a holding company system under the control of the Securities and Exchange Commission, there would be very few authorizations granted.

Over the years, since the Act was passed, applications under this Section have accordingly been confined primarily to interlocking positions between electric utilities within a holding company system approved by the Securities and Exchange Commission. Most of these applications have been granted. There have been only a very few applications filed to hold positions between public utilities and supply companies, the majority of which have either been withdrawn or denied. As a general principle, we feel that such interlocking positions should not be permitted where the supplier is in a position to furnish any appreciable amount of the electrical equipment in any category purchased by the utility. In such instances, any possible benefit to the two companies from having an individual serve both of them in a responsible capacity is outweighed by the potential disadvantages to the public utility, its customers and others in the markets in which the utility and the supplier operate.

In the present case, we believe it clear that the record of purchases in the past by Central Hudson from Fargo indicates that the holding of interlocking positions in the two companies would involve a potential conflict of interest which could have an adverse effect on public or private interests.

Accordingly, the Commission, having considered the above application as supplemented, and upon the information therein contained, *finds:*

Applicant has failed to show by his application that neither public nor private interests will be adversely affected by his holding the positions referred to above. Accordingly, it is necessary and appropriate for the purposes of the Federal Power Act that Applicant's request for authorization to hold these positions be denied as hereinafter ordered.

The Commission orders:

The application heretofore filed by the Applicant pursuant to Section 305(b) of the Federal Power Act, seeking to hold the positions referred to above, is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP65-295

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 13, 1965)

On March 23, 1965, Texas Gas Transmission Corporation (Applicant) filed in Docket No. CP65-295 an application pursuant to Section 7(c) of the Natural Gas

Act, as implemented by Section 157.7(b) of the Regulations under the Act, for a certificate of public convenience and necessity authorizing the construction during the 12-month period commencing May 30, 1965, and the operation of miscellaneous field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers in the general area of Applicant's existing transmission system, all as more fully set forth in the application in this proceeding.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

The total cost of the facilities covered by this application will not exceed a maximum of $3,000,000, with no single project to exceed a cost of $500,000, which costs are proposed to be financed with funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 11, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Texas Gas Transmission Corporation, a Delaware corporation having its principal place of business in Owensboro, Kentucky, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order, issued March 30, 1949, in Docket No. G–859 (8 FPC 190).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the 12-month period commencing May 30, 1965, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $3,000,000, with no single project to exceed a cost of $500,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Texas Gas Transmission Corporation, to construct during the 12-month period commencing May 30, 1965, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the 12-month period commencing May 30, 1965, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $3,000,000, with no single project to exceed a cost of $500,000.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP65-306

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 13, 1965)

On March 29, 1965, Transcontinental Gas Pipe Line Corporation (Applicant) filed in Docket No. CP65-306 an application pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(b) of the Regulations under the Act, for a certificate of public convenience and necessity authorizing the construction during the twelve-month period commencing on May 25, 1965, and the operation of minor lateral and field facilities to enable Applicant to take into its certificated pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application in this proceeding.

The total cost of the proposed facilities will not exceed a maximum of $2,000,000, and no single project will exceed a cost of $500,000, which costs are to be financed by cash on hand or by short term bank loans.

The purpose of this "budget-type" application is to enable Applicant to establish additional connections in fields from which Applicant is already authorized to receive gas where it is not possible to construct facilities under the exemption provided by Section 2.55(d) of the Commission's Rules, to provide necessary booster compressor facilities in such fields or to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 11, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 18, 1948, in Docket No. G-1143 (7 FPC 145).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate, therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the twelve-month period commencing on May 25, 1965, and the total expenditures for facilities to be constructed hereunder should be limited to a maximum of $2,000,000, with no single project to exceed a cost of $500,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Transcontinental Gas Pipe Line Corporation, to construct during the twelve-month period commencing on May 25, 1965, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the twelve-month period commencing on May 25, 1965, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $2,000,000, with no single project to exceed a cost of $500,000.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TRANSWESTERN PIPELINE COMPANY, DOCKET NO. CP65–285

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 13, 1965)

On March 15, 1965, Transwestern Pipeline Company (Applicant) filed in Docket No. CP65–285 an application pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(c) of the Regulations under the Act, for a certificate of public convenience and necessity authorizing the construction during the calendar year 1965 and operation of certain minor gas sales and transportation facilities, including taps, valves, meters and service lines, for the purpose of enabling Applicant to make various minor sales to customers along its system, all as more fully set forth in the application in this proceeding.

Applicant states that the proposed facilities will be used for the purposes specifically set forth in Section 157.7(c)(1) of the Commission's Regulations, except that Applicant will not make any direct industrial sales or any miscellaneous rearrangements under the authorization herein sought.

Applicant proposes to construct a maximum of: (1) 35 new delivery points for distributors, (2) 10 miles of no larger than 4-inch pipeline, (3) 35 taps and (4) 5 meters. Further, Applicant states that delivery to any one purchaser will not exceed 100,000 Mcf annually and no gas will be used for boiler fuel purposes as defined in Section 157.7(c)(9) of the Commission's Regulations. The total estimated cost of the proposed facilities will not exceed $150,000, which cost will be financed with funds on hand. These costs are exclusive of the costs of taps and valves for which Applicant will be reimbursed under the terms and conditions of its FPC Gas Tariff for right-of-way service under Rate Schedule RW–1, which covers sales to distributors for resale to consumers who granted easements for Applicant's pipeline and have a right to have a tap installed on the right-of-way.

Section 157.7(c)(1) of the Commission's Regulations provides that no budget type application for service to a distributor who is required to make a contribution for the cost of construction of facilities may be filed pursuant to said section. In view of the reimbursement provisions for Applicant's Rate Schedule RW–1 customers, the aforesaid provision of Section 157.7(c)(1) should be waived insofar as it would apply to said customers.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 11, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Transwestern Pipeline Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of August 10, 1959, in Docket No. G–14871, *et al.* (22 FPC 391).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and sale of natural gas in interstate commerce and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(6) The authorization hereinafter granted should be limited to construction during the calendar year 1965 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $150,000, with the total deliveries to any one customer not to exceed a maximum of 100,000 Mcf of natural gas per year.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 157.7(c) (8) of the Commission's Regulations under the Natural Gas Act.

(8) The certificate issued hereinafter is granted on the express condition that any interruptible service authorized herein should be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

(9) That part of Section 157.7(c) (1) of the Commission's Regulations providing that no budget-type application may be filed pursuant to said section for service to a distributor who is required to make a contribution for the cost of construction of facilities should be waived insofar as it would apply to Applicant's Rate Schedule RW–1 customers.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Transwestern Pipeline Company, to construct during the calendar year 1965 the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities to sell natural gas as hereinbefore set forth, and as hereinafter provided.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(C) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1965 and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $150,000, with the total deliveries to any one customer limited to a maximum of 100,000 Mcf of natural gas per year.

(D) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

(E) The certificate issued hereby is granted on the express condition that any interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

(F) That part of Section 157.7(c)(1) of the Commission's Regulations providing that no budget-type application may be filed pursuant to said section for service to a distributor who is required to make a contribution for the cost of construction of facilities is hereby waived insofar as it would apply to Applicant's Rate Schedule RW-1 customers.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP60-14

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 18, 1965)

On March 31, 1965, United Gas Pipe Line Company (Petitioner) filed in Docket No. CP60-14 a petition to amend the order issued by the Commission in said docket on August 11, 1960, 24 FPC 216, which order authorized, among other things, the construction and operation of facilities and the delivery of up to 4,250 Mcf of natural gas per day to American Cyanamid Company (American) for use in the latter's acrylic fiber manufacturing plant located in Santa Rosa County, Florida.

Petitioner herein requests that the order of August 11, 1960 be amended to authorize it to increase deliveries to American by 9,250 Mcf per day, to 13,500 Mcf per day, pursuant to an agreement between the parties dated March 24, 1965. Petitioner further requests authorization to enlarge the meter station used to serve this customer by replacing the present 4-inch meter tubes with 6-inch tubes, at an estimated net cost of $1,337.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the petition has been filed.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued in Docket No. CP60-14 on August 11, 1960 be amended as hereinafter ordered.

The Commission orders:

(A) The order of the Commission issued in Docket No. CP60-14 on August 11, 1960 be and the same is hereby amended by authorizing Petitioner to enlarge the meter station utilized for natural gas service to American Cyanamid Company and to operate said facility for delivery to this customer of up to a total of

13,500 Mcf of natural gas per day, as hereinbefore described and as set forth in the petition.

(B) The authorization granted hereby shall not entitle American Cyanamid Company to any priorities or rights to additional gas for meeting any future increase in its requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

(C) In all other respects the order hereby amended shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., PROJECT NO. 2338

ORDER PERMITTING INTERVENTION

(Issued May 14, 1965)

In our Opinion No. 452, which contained our order issuing a license to Consolidated Edison on March 9, 1965, 33 FPC 428, we calendared a hearing for May 4, 1965, the hearing order providing for reception of evidence as to the best route for the overhead transmission line between Nelsonville, N.Y. and the Company's transmission line grid. The order also provided for the receipt of additional evidence concerning the design of fish protective facilities. On March 26, 1965, in a notice of overhead transmission lines to be considered at the hearing (30 F.R. 4265), we extended the time for transmission line interventions, as well as those relating to fishery, to May 3, 1965.

The following have filed timely petitions to intervene on the transmission line issue: (1) Town of Carmel, Putnam County, N.Y.; (2) Taconic State Park Commission; (3) William A. Perry and Mari F. Perry; (4) Rock Industries, Inc.

The Town of Carmel is interested in the transmission line issue because three potential routes would come within its boundary. However, the petition indicates that the Town desires to establish the undesirability of overhead transmission, an issue outside the scope of the hearing. Therefore, for reasons similar to those given in our order of April 26, 1965, permitting the Cortlandt Citizens for the Hudson River to intervene, we are limiting the participation of the Town of Carmel to the issue of the best route for the overhead transmission lines between Nelsonville, N.Y. and the Company's transmission line grid.

The following have filed timely petitions to intervene in the fishery aspect of the proceeding: (1) Hempstead Town Lands Resources Council; (2) Nassau County Fish and Game Association, Inc.

The Commission finds:

The participation of the above-named petitioners in this proceeding may be in the public interest.

The Commission orders:

The above-named petitioners are hereby permitted to intervene in the above-entitled proceeding subject to the rules and regulations of the Commission: *Provided*, That the participation of interveners on the transmission line issue shall be limited to the question of the best route for the overhead transmission lines to be included in the license issued for the Cornwall Pumped Storage Project; *Provided further*, That the admission of the Petitioners shall not be construed as recognition by the Commission that the interveners might be aggrieved because of any order or orders of the Commission entered in this proceeding.

Commissioner Ross *dissents* to the limitation of the above-named petitioners to the issue of overhead transmission lines. For the reasons stated in his dissent to Opinion No. 452, he would have permitted evidence respecting underground transmission lines.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP64–18

ORDER FURTHER AMENDING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 14, 1965)

On February 18, 1965, Panhandle Eastern Pipe Line Company (Panhandle) filed in Docket No. CP64–18 a petition to further amend the order of the Commission issued in said docket July 24, 1964, as amended October 21, 1964 and December 29, 1964, 32 FPC 349, 1157, 1546. The order issued July 24, 1964, authorized Panhandle to construct and operate natural gas facilities and to increase sales to fifty existing customers. The aforementioned amending orders provided for increased contract quantities to six of Panhandle's resale customers.

By the instant filing, Panhandle seeks further amendment of the order issued July 24, 1964, in Docket No. CP64–18 by requesting revision of authorized summer contract quantities to two customers, as follows:

Citizens Gas Fuel Company

(Volumes in Mcf)

	Apr.	May	June	July	Aug.	Sept.	Oct.
Present	8,200	6,200	4,300	3,800	3,800	6,000	8,000
Proposed	10,200	8,000	5,900	5,200	5,400	7,600	9,800
Increase	2,000	1,800	1,600	1,400	1,600	1,600	1,800

Missouri Utilities Company

(Volumes in Mcf)

	Apr.	May	June	July	Aug.	Sept.	Oct.
Present	13,800	9,300	4,300	3,000	3,000	6,500	13,000
Proposed	13,800	9,300	4,300	3,500	3,500	6,500	13,000
Increase	0	0	0	500	500	0	0

Panhandle will have adequate capacity to provide these revised contract quantities.

Due notice of the filing of the petition to amend and opportunity for hearing thereon has been given by publication in the Federal Register on March 11, 1965 (30 F.R. 33). No protest or petition to intervene or request for hearing has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission order issued July 24, 1964, as amended, in Docket No. CP64–18 be further amended as hereinafter ordered.

The Commission orders:

(A) The certificate of public convenience and necessity issued to Panhandle Eastern Pipe Line Company in the Commission order of July 24, 1964, as amended October 21, 1964 and December 29, 1964, in Docket No. CP64–18 be and the same is hereby amended by authorizing the sale and delivery of additional quantities of natural gas as hereinbefore described and as more fully described in the aforementioned petition.

(B) In all other respects the order in Docket No. CP64–18 shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

RUMFORD FALLS POWER COMPANY, PROJECT NO. 2333

ORDER ISSUING LICENSE (MAJOR)

(Issued May 14, 1965)*

Application was filed on December 27, 1962 by Rumford Falls Power Company (Applicant) of Rumford, Maine, for a license under Section 4(e) of the Federal Power Act (Act) for its constructed Project No. 2333, known as the Rumford Falls Project and comprising the Upper and Lower Stations, located on the Androscoggin River, in the Town of Rumford Falls, Maine. The project does not affect land of the United States.

According to the application, the project was constructed in 1892, 1910 and 1918. Reinforcing of Middle Dam was done in 1926, and the Middle Dam Headworks were strengthened in 1955. The No. 4 unit at the Upper Station was converted in 1950 from 40 to 60 cycle generation. In 1954, the lower site was redeveloped by including the total head included in the old Island Station and the Old Lower Station into what is now known as the Lower Station. From the application, it is impossible to determine the increase in the capacity as the previous capacity is not known. The reconstruction was completed and the plant was placed in operation in October 1954.

The Upper Station develops a total of 21,970 kw and the Lower Station is capable of developing 12,800 kw. The energy is delivered to Applicant's parent company, Oxford Paper Company.

In its order issued July 24, 1958,[1] the Commission found that the Androscoggin River throughout its entire length is a "navigable water" as defined in Section 3(8) of the Federal Power Act and a "navigable water of the United States" within the meaning of Section 23(b) of the Act. The basis of this finding was that the Androscoggin River is presently, and for more than a century has been used for the transportation of logs and other forest products by water.

The Secretary of the Army and the Chief of Engineers have advised that the plans of the project structures affecting navigation have been approved pursuant to Section 4(e) of the Act.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project certain conditions in the interest of fish and wildlife resources.

---

*Memorandum Opinion No. 465 and order issued July 12, 1965, denying application for rehearing, 34 FPC 27. Remanded for clarification, *Rumford Falls Power Co.* v. *F.P.C.*, 355 F. 2d 683 (CA1–1966).

[1] *New Hampshire Water Resources Board*, Docket No. E–6807, 20 FPC 99–101.

For the reasons set forth in Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of January 1, 1954 and a termination date of December 31, 1993.

Since the subject application was filed prior to our rule set out in Section 4.41 of the Commission's Regulations under the Federal Power Act (18 CFR 4.41), as clarified by our Order No. 292, issued January 8, 1965, 33 FPC 32, requiring the filing of recreational use plan with the application, we are by Article 25 herein requiring the licensee to file a plan within one year, such plan to be in conformance with the requirements of Section 4.41 Exhibit R of Regulations under the Federal Power Act.

The Commission finds:

(1) Applicant is a corporation organized under the laws of the State of Maine and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(2) Public notice of the filing of the application has been given as required by the Act. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(3) The issuance of a license for the project as hereinafter provided will not affect a Government dam or the development of any water resources for public purposes which should be undertaken by the United States.

(4) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(5) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 46,400 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project for the costs of administration of Part I of the Act is reasonable.

(6) The substations, generator leads, transmission lines and appurtenant facilities mentioned in paragraph (B) below are parts of the project and should be included in the license for the project.

(7) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

(A) This license is hereby issued to Rumford Falls Power Company (Licensee) of Rumford, Maine, under Section 4(e) of the Federal Power Act (Act) for a period effective as of January 1, 1954, and terminating on December 31, 1993, for the continued operation and maintenance of the Rumford Falls Project No. 2333, located on the Androscoggin River, a navigable water of the United States, in the Town of Rumford, Maine, subject to the terms and conditions of the Act, which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Constructed Project No. 2333 consists of:

(i) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interests in such lands necessary or appropriate for the purposes of the project, whether such lands or interests therein are owned or held by the applicant or by the

United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit J: (FPC No. 2333-1) entitled, "General Map."

Exhibit K: Sheet 1 (FPC No. 2333-2) entitled, "Detail Map—Middle Dam, Canal and Lower Station."

Exhibit K: Sheet 2 (FPC No. 2333-3) entitled, "Detail Map—Upper Dam, Upper Station and Reservoir."

Exhibit K: Sheet 3 (FPC No. 2333-4) entitled, "Detail Map—Reservoir."

Exhibit K: Sheet 4 (FPC No. 2333-5) entitled, "Detail Map—Reservoir."

Exhibit K: Sheet 5 (FPC No. 2333-6) entitled, "Supplementary Sheet—Map of Original Purchases."

(ii) Constructed Project No. 2333 consist of:

Upper Station: Located in the town of Rumford, Maine, on the Androscoggin River, consisting of a concrete gravity dam with pin type flashboards, a gatehouse with power-operated headgate hoists and gates, two for each of four active penstocks, a reservoir of approximately 400 acres area, a powerhouse in two sections, the Old Station 120 feet long and 30 feet wide containing one hydroelectric unit of 4,050 kw, the New Station, 140 feet long and 60 feet wide contains two 9,000 hp and one 10,000 hp units developing a total of 17,920 kw, two transformer substations, a 40 cycle, 2 circuit, 11 kv, and one 60 cycle 11 kv transmission lines each on steel towers about one mile long between the Upper Station and the Oxford Paper Company, and underground 11 kv tie line about 800 feet long from the powerhouse to the substation of the Central Maine Power Company;

Lower Station: Located just below the Upper Station with crest elevation being same as tailwater elevation of Upper Station, consisting of a rockfilled, timber crib, gravity-type dam with 12 inch pin-type flashboards, a 2,400 foot canal with a set of 10 headgates and a gatehouse containing two motorized gate hoists, two 12 foot steel penstocks, surge tanks, a powerhouse containing two hydroelectric units capable of developing 6,400 kw each;

Transmission Lines: The two transformer substations are required to combine into one system the generating and conversion equipment of various voltages as given in detail in Exhibit M. There is one 40 cycle, 2 circuit, 11 kv, and one 60 cycle, single circuit, 11 kv power line, each on steel towers and approximately one mile in length, which transmits power between the Upper Station and Oxford Paper Company. The tie line to Central Maine Power Company consists of two 3 conductor direct burial cables at 11.5 kv from the Upper Station powerhouse to switchgear located in the Central Maine Power Company substation approximately 800 feet from the powerhouse;

and appurtenant mechanical and electrical facilities, the location, nature and character of which structures are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit L: Sheet 1 of 9 (FPC No. 2333-7) entitled, "Detail Map Upper Dam & Upper Station;" sheet 2 of 9 (FPC No. 2333-8) entitled "Sections Thru Upper Dam, Power Station & Gatehouse;" sheet 3 of 9 (FPC No. 2333-9) entitled, "Elevations of Upper Station and Gatehouse;" sheet 4 of 9 (FPC No. 2333-10) entitled, "Detail Map Lower Station Grounds & Headworks;"

Exhibit L: Sheet 5 of 9 (FPC No. 2333-11) entitled, "Sections and Profile Lower Station Development;" sheet 6 of 9 (FPC No. 2333-12) entitled, "Elevations of Lower Station and Gatehouse;" sheet 7 of 9 (FPC No. 2333-13) entitled, "Detail Map Middle Dam & Middle Canal Headworks;" sheet 8 of 9 (FPC No.

2333–14) entitled, "Sections of Middle Dam, Middle Canal & Headworks;" sheet 9 of 9 (FPC No. 2333–15) entitled, "Single Line Diagram Power System;" and

Exhibit M: Consisting of 24 typewritten pages and filed December 27, 1962, entitled "General Description and Specifications of Equipment and Appurtenances."

(iii) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–3 (Revised August 1, 1964) entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States" (32 FPC 1114), which terms and conditions, designated as Articles 1 through 29, are attached hereto and made a part hereof; and subject to the following special conditions set forth herein as additional articles:

Article 30. The Licensee shall pay to the United States the following annual charge, effective as of January 1, 1954:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with its regulations, in effect from time to time. The authorized installed capacity for such purposes is 46,400 horsepower.

Article 31. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall, after notice and opportunity for hearing, permit such reasonable use of its reservoirs or other project works or parts thereof as may be ordered by the Commission in the interest of comprehensive development of the waterway or waterways involved and the conservation and utilization of water resources of the region for water supply for steam-electric, irrigation, industrial, municipal or similar purposes, consistent with the primary objective of the project. The Licensee shall receive such reasonable compensation as may be appropriate for use of its reservoirs or other project works or parts thereof for such purposes, any such compensation to be fixed either by Commission approval of an agreement between the Licensee and the party or parties benefiting or by the Commission in the event the parties are unable to agree. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the application possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TEXAS GAS UTILITIES COMPANY, DOCKET NOS. CP62–288, CP65–269, AND CP65–270

FINDINGS AND ORDER AUTHORIZING THE EXPORTATION OF NATURAL GAS AND CANCELLING DOCKET NUMBER

(Issued May 14, 1965)

On March 5, 1965, Texas Gas Utilities Company (Applicant) filed in Docket No. CP65–270 an application pursuant to Section 3 of the Natural Gas Act for authorization to continue, as successor to Associated Oil and Gas Company (Associated), the exportation of natural gas from the United States to the Republic of Mexico, all as more fully set forth in the application.

The exportation of natural gas involved herein was originally undertaken in 1935, and has subsequently been carried out by various parties. Original authorization was issued to Texas Gas Utilities Company (TGU Co.) (no relation to Applicant) by Commission order issued September 10, 1940, in Docket No. G–117. By order issued November 28, 1961, 26 FPC 770, in Docket No. CP61–280, Texas Gas Utilities Corporation (TGU Corp.) (no relation to Applicant) was authorized to continue the exportation in lieu of TGU Co.; and by order issued December 20, 1962, 28 FPC 1075, in Docket No. CP62–287, Associated was authorized to continue the exportation in lieu of TGU Corp.

The subject exportation of natural gas involves sales of approximately 3,500 Mcf per day to Compania National de Gas, S. A. (Compania) for resale and distribution in Piedras Megras, Coahuila, Mexico, and to La Consolidada, S. A. (Consolidada) for use in a steel plant located near the aforementioned town. Said exportation will be continued by Applicant pursuant to contracts originally executed by TGU Corp. as seller and Compania and Consolidada as buyers. The TGU Corp.-Compania contract was executed June 20, 1956, effective December 21, 1956, and extends for a ten year period ending December 21, 1966. The TGC Corp.-Consolidada contract is dated June 19, 1956, was amended December 10, 1956, was further amended by letter dated September 16, 1960, and extends for a ten year period ending June 19, 1966. The aforementioned contracts have been assigned to Applicant by Associated by conveyance dated January 12, 1965.

On March 5, 1965, Applicant also filed, in Docket No. CP65–269, an application pursuant to Executive Order No. 10485 for a permit authorizing the continued maintenance and operation of facilities located at the international boundary between the United States and Mexico near Eagle Pass, Texas for the subject exportation. Said facilities were the subject of a permit issued to Associated in Docket No. CP62–288 on December 20, 1962. It appears there is no need to issue a new permit, and accordingly the present permit will be amended by substituting Applicant in lieu of Associated as holder thereof.[1]

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

The Commission finds:

(1) Applicant, Texas Gas Utilities Company, a Delaware corporation having its principal place of business in Corpus Christi, Texas, is a "person" within the meaning of Sections 2(1) and 3 of the Natural Gas Act, and the exportation of natural gas proposed to be continued by it is subject to the jurisdiction of the Commission under the provisions of Section 3 of the Act.

---

[1] The amended permit is to be issued concurrently with this order.

(2) The continued exportation of natural gas by Applicant, as proposed, is appropriate and consistent with the public interest, provided such exportation be upon the terms and conditions hereinafter specified, and authorization therefor should be granted as hereinafter ordered.

(3) The permit heretofore issued to Associated Oil and Gas Company on December 20, 1962, in Docket No. CP62–288 should be amended by substituting Applicant in lieu of Associated as holder thereof.

The Commission orders:

(A) Applicant, Texas Gas Utilities Company, be and the same is hereby authorized to continue, as successor to Associated Oil and Gas Company, the exportation of natural gas from the United States to Mexico in accordance with the terms of the contracts hereinbefore described, upon the terms and conditions of this order.

(B) The authorization granted by paragraph (A) above shall not be transferable or assignable and shall remain in effect only so long as Applicant continues the acts and operations thereby authorized in accordance with the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder, and in accordance with the terms and conditions of this order.

(C) The authorization granted herein shall automatically terminate upon the termination or expiration of the contracts hereinbefore described, and upon the termination or discharge of each such contract, Applicant shall forthwith notify the Commission in writing of the fact and date of such termination.

(D) Applicant shall not, during the terms of the authorization granted by this order, materially change or alter its export operations as now represented to the Commission without first obtaining the permission and approval of the Commission.

(E) In the event that Applicant should abandon or permanently cease for any reason whatsoever all or any part of its export operations prior to the termination dates of the contracts involved, Applicant shall forthwith notify the Commission of said fact and the reason therefor.

(F) Applicant shall file reports with the Commission from time to time under oath and in such detail as the Commission may require with respect to the whole or any part of its natural gas export operations and shall continue making the annual filing required of its predecessors.

(G) The permit heretofore issued to Associated Oil and Gas Company on December 20, 1962, in Docket No. CP62–288 shall be amended by substituting Applicant in lieu of Associated as holder thereof.

(H) Docket No. CP65–269 be and the same is hereby cancelled.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

GILMAN PAPER COMPANY, PROJECT NO. 2392

ORDER ISSUING LICENSE (MAJOR)

(Issued May 17, 1965)

Application was filed on August 7, 1963, by Gilman Paper Company (Applicant) of New York, New York, for a license under Section 4(e) of the Federal Power Act (Act) for constructed major Project No. 2392, known as the Gilman Project, situated on the Connecticut River, a navigable water of the United States, in the Towns of Lunenburg and Guildhall, Essex County, in the vicinity of the

Village of Gilman, Vermont, and the Towns of Dalton and Lancaster, Coos County, New Hampshire. The project does not affect lands of the United States.

According to the application, the first dam at the site was completed about 1900 for use in the operation of a pulp and paper mill. In 1928 the dam was reconstructed after having been washed out. Applicant installed one generator in 1932, one generator in 1935, and two generators in 1941.

In accordance with the criteria set forth in our April 25, 1962 Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of January 1, 1941 and a termination date of December 31, 1990.[1]

The Secretary of the Army and the Chief of Engineers have approved the plans of the project structure insofar as the interests of navigation are concerned pursuant to Section 4(e) of the Act.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project conditions in the interests of fish and wildlife and recreation as set forth in Form L-3, and added that should pollution in the Connecticut River be abated sometime in the future and conditions may again be favorable for anadromous fish and resident sport fish species, it may be desirable that adequate fish passage facilities and other fish protective devices be provided at the Gilman Project, including adequate releases of water. By letter dated February 27, 1964, Applicant objected to the inclusion of the fish and wildlife conditions set forth in Form L-3 as being unwarranted in view of the sluggish and shallow conditions in the Connecticut River above the Gilman Project. Applicant requested that any license for the project include an additional condition limiting the application of Article 15 of Form L-3 until the need for fishways has been shown to exist as evidenced by the successful operation of similar facilities at all dams on the Connecticut River downstream from Applicant's. The State of New Hampshire Fish and Game Department recommended for inclusion in any license for the project conditions in the interests of fish and wildlife essentially the same as those recommended by the Department of the Interior, and in addition thereto a condition providing for minimum water releases for the conservation and development of fish resources. By letter dated December 30, 1963, Applicant expressed the same opposition it had expressed to the Department of the Interior's recommendations and for the same reasons. We believe that Articles 15 and 16 of Form L-3 adequately provide the conditions relative to fish and wildlife sought by the Department of the Interior and the State of New Hampshire and that it is in the public interest to include in this license such conditions which provide for notice and opportunity for hearing.

Applicant indicates that present recreational use in and around the project area is minimal. Appropriate state and local agencies in New Hampshire and Vermont are not prepared at this time to make recommendations for these facilities. The future potential for recreational development and for establishment of a cold water fishery in the Connecticut River would, however, increase the recreational value of the project. Under these circumstances, we have concluded that no recreational use facilities are required at the project at the present time, but we are providing by Article 32 that the Licensee shall continue to cooperate with Federal, State and Local agencies in the development of facilities necessary for full recreational utilization by the public of project lands and waters and that it shall report the results of such cooperation and development to the Commission periodically beginning at the end of three years from date of issuance of this license and every fifth year thereafter. Moreover, pursuant to the provisions of Article 17 of the License, the Commission is reserving the authority to require the Licensee to construct, maintain, and operate such additional recreational facilities as the Commission, after notice and opportunity for hearing, may determine are necessary and desirable and reasonably consistent with the primary purpose of the project.

---

[1] On August 14, 1951, 10 FPC 1255, in Docket No. E-6346, *Connecticut River Power Company*, the Commission found the Connecticut River from its mouth to points above the mouth of the Nulhegan River, a tributary of the Connecticut River, is a navigable water of the United States. Project No. 2392 is within that reach of the Connecticut River.

The Department of Health, Education, and Welfare has advised, among other things, that at this time the project does not constitute a source of pollution and removal of the dam is not warranted. The Department does not envision that the granting of the license will create or intensify vector problems.

Two informal protests against the "construction" of "proposed" Project No. 2392 have been received. The protestants have been advised that the application involved an existing dam and hydroelectric plant at the site of Applicant's paper mill in the Village of Gilman, Vermont, and no new construction is involved.

The Commission finds:

(1) The Gilman Project affects navigable waters of the United States.

(2) Applicant is a corporation organized under the laws of the State of New Hampshire, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. Except for the above-mentioned informal protests, no other protests and no petitions to intervene have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of waterpower development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 4,500 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable.

(7) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as a part of this license, except that Exhibit K, sheet 2 of 2 (FPC No. 2392-3) should be approved only insofar as it shows the location of the dam and power plant.

The Commission orders:

(A) This license is hereby issued to Gilman Paper Company (Licensee) under Section 4(e) of the Federal Power Act (Act) for a period effective January 1, 1941 and terminating December 31, 1990, for the continued operation and maintenance of Gilman Project No. 2392, located on the Connecticut River, a navigable water of the United States, subject to the terms and conditions of the Act which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Gilman Project No. 2392 consists of:

(i) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interests in such lands necessary or appropriate for the purpose of the project, whether such lands or interest therein are owned or held by the Licensee or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit J: (FPC No. 2392-1) entitled "Plan View of Entire Project Area Hydroelectric Station."

Exhibit K: Sheet 1 of 2 (FPC No. 2392-2) entitled "Map Showing Elevations in Immediate Vicinity of Hydroelectric Station and Dam;" sheet 2 of 2 (FPC No. 2392-3) entitled "Detail Plan View of Project Area covering Hydroelectric Station and Adjacent Mill." Approval only insofar as it shows the location of the dam and power plant.

(ii) Project works consisting of: a dam (crest elevation about 828 feet USGS, topped with 5-foot flashboards) extending from the left bank, including a concrete gravity section (with two sluice gates) about 108 feet long, a rock filled timber crib section about 211 feet long (including a 27-foot long sluiceway—crest elevation about 827 feet USGS, and a 15-foot long bulkhead—crest elevation about 839 feet (USGS); a powerhouse, extending to the right bank, with one 1250 hp turbine and three 1000 hp turbines direct connected to one 990 kva (1.0 PF) and three 1000 kva (0.8 PF) generating units; and appurtenant facilities; the location, nature and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also formed part of the application for license and which are designated and described as follows:

Exhibit L: Sheet 1 of 4 (FPC No. 2392-4) entitled "Plan View and Cross Sections of Hydroelectric Station;" sheet 2 of 4 (FPC No. 2392-5) entitled "Construction Details, Plans and Cross Sections of Dam;" sheet 3 of 4 (FPC No. 2392-6) entitled "Construction Details, Plans and Cross Sections of Dam—Concrete Part;" sheet 4 of 4 (FPC No. 2392-7) entitled "Construction Details, Plans and Cross Sections of Dam—Timber and Rock Part;" and

Exhibit M: Consisting of five typewritten pages entitled "General Description of Equipment," filed in the Commission August 7, 1963.

(iii) All of the structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as a part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-3 (Revised August 1, 1964), entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States" (32 FPC 1114), which terms and conditions, designated as Articles 1 through 29, are attached hereto and made a part hereof, except Article 25 and subject to the following special conditions set forth herein as additional articles:

Article 30. The Licensee shall pay to the United States the following annual charge, effective as of January 1, 1941:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. The authorized installed capacity for such purposes is 4,500 horsepower.

Article 31. The Licensee shall, within six months from the date of issuance of this license, submit for Commission approval an additional Exhibit "K" drawing, showing the project boundary and any other pertinent details in the vicinity of the dam and powerhouse, prepared in accordance with the Commission's Rules and Regulations.

Article 32. Licensee shall cooperate with State and local agencies and individuals in the development and maintenance of access areas and roads and such other facilities necessary for full recreational utilization by the public of project lands and waters, consistent with the terms of the license and the operation of the project. At the end of three (3) years from the date of issuance of this license and every fifth year, thereafter, Licensee shall advise the Commission of the results of cooperation with State and local agencies and of further recreation development at the project.

Article 33. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall, after notice and opportunity for hearing, permit such reasonable use of its reservoirs or other project works or parts thereof as may be ordered by the Commission in the interest of comprehensive development of the waterway or waterways involved and the conservation and utilization of water resources of the region for water supply for steam-electric, irrigation, industrial, municipal or similar purposes consistent with the primary objective of the project. The Licensee shall receive such reasonable compensation as may be appropriate for use of its reservoirs or other project works or parts thereof for such purposes, any such compensation to be fixed either by Commission approval of an agreement between the Licensee and the party or parties benefiting or by the Commission in the event the parties are unable to agree. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the application possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as a part of this license to the extent indicated in finding (7) above.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NIAGARA MOHAWK POWER CORPORATION, PROJECT NOS. 2318, 2320, AND 2330

ORDER WAIVING PENALTY FOR NON-PAYMENT OF ANNUAL CHARGES

(Issued May 17, 1965) *

On April 22, 1965, the Presiding Examiner certified to the Commission the motion by counsel of Niagara Mohawk Power Corporation (Licensee) for a waiver, pursuant to subparagraph 11.31(e) of the Regulations under the Federal Power Act, of penalties for non-payment of annual charges until the Commission has made a final determination on Licensee's application for rehearing as to whether the charges were properly assessed.

---

*See Opinion No. 481, issued November 15, 1965, 34 FPC 1298.

The Commission in 1963 and 1964 issued licenses for the Licensee's Project Nos. 2318, 2320, and 2330. Project No. 2318 is located on the Sacandaga River. Project Nos. 2320 and 2330 are located on the Raquette River. These licenses were made effective from the date on which these rivers were determined to be navigable waters of the United States.[1] The licenses for these projects have been accepted by Licensee.

On July 17, 1964, the Commission issued a statement of annual charges for Project No. 2318 in the amount of $27,883.07 and on October 16, 1964, it issued statements of annual charges for Project Nos. 2320 and 2330 in the amounts of $115,437.13 and $30,938.85, respectively. These charges cover the period from 1949 through 1963.

In these consolidated proceedings the Licensee challenges the Commission's authority to assess annual charges from the effective date of the license. A hearing was held April 20, 1965 respecting the issues presented. The Presiding Examiner has not filed his initial decision. In the circumstances, we believe that it is appropriate that penalties for non-payment of the annual charges assessed as described above should be waived, as hereinafter provided, until we have made a final determination on whether these charges were properly assessed.

The Commission finds:

It is appropriate and in the public interest in administering Part I of the Federal Power Act (16 U.S.C. 791–823) that penalties for the Niagara Mohawk Power Corporation's non-payment of annual charges for its Project Nos. 2318, 2320, and 2330 be waived under subparagraph 11.31(e) of the Regulations under the Federal Power Act on the conditions hereinafter provided.

The Commission orders:

(A) Penalties for the Niagara Mohawk Power Corporation's non-payment of the annual charges described above for its Project Nos. 2318, 2320, and 2330 hereby are waived under subparagraph 11.31(e) of the Commission's Regulations under the Federal Power Act until the Commission has made a final determination on the record as to whether these charges were properly assessed: *Provided, however*, that interest at the rate of 6 percent per annum shall be paid from the dates of the statements of annual charges until the date of payment of whatever amount ultimately may be required to be paid.

(B) This order is subject to acknowledgement of its acceptance by Licensee within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CITY OF PASADENA, CALIFORNIA, PROJECT NO. 1250

ORDER GRANTING EXEMPTION FROM PAYMENT OF ANNUAL CHARGES

(Issued May 17, 1965)

Application was filed on March 22, 1965 by the City of Pasadena, California, licensee for Project No. 1250, for exemption from payment of the net amount of annual charges under the license for the project for the calendar year 1964, pursuant to the provisions of Section 10(e) of the Federal Power Act (Act) and Regulations of the Commission thereunder, on the ground that the balance of the power not used by the licensee for municipal purposes was sold to the public without profit.

---

[1] 8 FPC 231 (1949); and 8 FPC 390 (1949).

The statement of annual charges rendered by the Commission for the year involved amounted to $87.92. The application sets forth that the project operations for the year 1964 resulted in a net loss, and that the power was sold by the licensee to ultimate consumers without profit.

The Commission finds:

(1) The licensee is a municipality within the meaning of Section 3 (7) of the Act, and is entitled to claim exemption from payment of annual charges under Section 10(e) of the Act.

(2) The licensee is entitled to exemption from payment of all charges for which it was billed for the year 1964.

The Commission orders:

The licensee for Project No. 1250 is hereby exempted from payment of annual charges for which it was billed for the calendar year 1964.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

THE OHIO FUEL GAS COMPANY, DOCKET NO. RP65-51

ORDER ACCEPTING REVISED TARIFF SHEETS FOR FILING AND APPROVING REFUNDS

(Issued May 18, 1965)

The Ohio Fuel Gas Company (Ohio), on April 1, 1965, tendered for filing certain revised tariff sheets to its FPC Gas Tariff, Third Revised Volume No. 1.[1] The proposed change in rates[2] would make effective as of January 1, 1965, a reduction in Ohio's jurisdictional rates of approximately $821,931, based upon sales for the twelve-months' period ended February 28, 1965.

The proposed rate filing, which we have docketed as shown above, reflects a reduction in the Federal income tax rate for corporations from 50 to 48 percent and also the flow-through of the rate reduction by Ohio's suppliers, United Fuel Gas Company (United) and Texas Gas Transmission Corporation, to give effect to reductions in the Federal corporate income tax rate on the same date. Ohio states that it will flow-through to its jurisdictional customers the refunds received from United to give effect to the same income tax reduction on United's cost of service as of March 1, 1964, through December 31, 1964. Ohio will credit current billings to reflect the proposed reduction in bills previously rendered for service during the monthly periods commencing January 1, 1965.

The proposed filing is not intended to change or otherwise affect the existing obligations of Ohio under the settlement agreement in Docket No. G-16818, *et al.*, or the Commission's orders therein. The rate levels of the Partial Requirements (CDS-PR) rate schedules contained in Ohio's existing tariff, heretofore, have been filed at the same levels as those in the CDS rate schedules. However, the proposed filing does not contain revised tariff sheets which reflect the proposed rate reduction in the CDS–PR rate schedules. We, therefore, will provide that such revised tariff sheets be filed.

---

[1] Eighth Revised Sheets Nos. 12, 24 and 30. Nineteenth Revised Sheets Nos. 7, 22 and 27.

[2] Appendix A hereto contains the proposed rate levels.

Ohio requests the wavier of the notice requirements of the Commission's regulations as may be necessary to permit the tendered tariff sheets to become effective as of January 1, 1965, as proposed. No protests or objections to Ohio's proposed reduced rates have been received.

The Commission finds:

(1) Good cause exists for waiving the notice requirements of Section 154 of the Commission's Regulations under the Natural Gas Act and for permitting the revised tariff sheets specified above to become effective as of January 1, 1965.

(2) The proposed revised tariff sheets and the rate reductions as proposed by Ohio are proper and in the public interest in carrying out the provisions of the Natural Gas Act, and such tariff sheets should be accepted for filing to be effective subject to the requirements of this order.

The Commission orders:

(A) The notice requirement of Section 154 of the Commission's Regulations under the Natural Gas Act is hereby waived and the revised tariff sheets specifically described hereinabove are accepted for filing to be effective as of January 1, 1965.

(B) Within twenty days hereof, Ohio shall tender for filing appropriate revised tariff sheets which reflect the same rate level in the Partial Requirements (CDS–PR) rate schedules as in the CDS rate schedules herein being accepted, such CDS–PR rate schedules to be subject to the provisions of any orders of the Commission which have been issued and which hereafter may be issued in the proceedings in Docket No. RP65–45.

(C) This order shall not be construed to change or otherwise affect the existing obligations of Ohio relating to refunds and rate reductions under orders heretofore issued by the Commission in proceedings involving Ohio; and further, this order is without prejudice to any findings or orders which have been made or which may hereafter be made by the Commission, and is without prejudice to any claims or contentions which may be made by the Commission, Ohio, the Commission staff, or any other party affected by this order, in any proceedings now pending or hereafter instituted by or against Ohio or any other persons or parties affected by this order.

APPENDIX A

Ohio Fuel Gas Company

Comparison of Proposed Rates With Presently Effective Rates

Rate Schedule	Present	Proposed
CDS-1:		
Demand	$1.87	$1.87
Commodity	32.27¢	32.05¢
AOS-1: Commodity	38.42¢	38.20¢
SGS-1: Commodity	50.90¢	50.68¢
CDS-1A:		
Demand	$1.87	$1.87
Commodity	32.71¢	32.49¢
AOS-1A: Commodity	38.86¢	38.64¢
SGS-1A: Commodity	51.34¢	51.12¢

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

INTERSTATE POWER COMPANY, DOCKET NO. E-7213

SUPPLEMENTAL ORDER AUTHORIZING ISSUANCE OF FIRST MORTGAGE BONDS, PREFERRED STOCK AND COMMON STOCK

(Issued May 19, 1965)

By order issued May 3, 1965, *supra*, p. 939, in the above-entitled matter, the Commission authorized Interstate Power Company (Applicant) to issue and sell at competitive bidding $14,000,000 principal amount of First Mortgage Bonds, due 1995, 166,000 shares of its authorized but unissued Preferred Stock of the par value of $50 per share, and 200,498 shares of additional Common Stock of the par value of $3.50 per share, subject to the provisions, among others, set forth in Paragraph (B) of that order as follows:

(B) The proposed issuance and sale of Bonds and Preferred Stock at competitive bidding, and the proposed issuance and sale of Common Stock in the manner set forth in the application shall not be consummated until:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h)(1) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.

(ii) The Commission, by further order, shall have approved the price to be received by Applicant for the proposed issuance of Bonds and the interest rate thereof, the price to be received by Applicant for the proposed issuance of Preferred Stock and the dividend rate thereon, the price per share to be received by Applicant for the Common Stock and the amount of any compensation for underwriters to be paid by Applicant in connection with the Common Stock.

Applicant on May 19, 1965, filed an amendment, pursuant to the requirements of the aforementioned Commission order, in which it states among other things, (1) that it proposes to accept, as representing the lowest annual cost of money to it, the bid of Halsey, Stuart & Co. Inc. to purchase the proposed issuance of $14,000,000, principal amount of Bonds, at the price of 99.784 percent of principal amount, with an interest rate of 4⅝ per annum; (2) that it proposes to accept as representing the lowest annual cost of money to it, the bid of White, Weld & Co.–Eastman Dillon, Union Securities & Co.–Equitable Securities Corporation–Stone & Webster Securities Corporation to purchase the proposed issuance of 166,000 shares of Preferred Stock, at the price of $50.459 with a dividend rate of 4.68 percent per annum; and (3) that it proposes to offer the Common Stock to the stockholders at a price of $27.25 per share and that it proposes to accept as representing the lowest commitment fee, the bid of Kidder, Peabody & Co. Incorporated to receive $10,999.99 aggregate amount of compensation for commitment to purchase the Common Stock unsubscribed for by stockholders.

The Commission finds:

(1) Applicant has satisfactorily complied with the requirements contained in paragraph (B) of the Commission's order issued May 3, 1965 in the above-entitled docket; and under the respective bids it proposes to accept for the

issuance of Bonds, Preferred Stock and Common Stock, (a) the price to be received by Applicant for the Bonds and the interest rate thereof are reasonable; (b) the price per share to be received by Applicant for the Preferred Stock and its dividend rate are reasonable, and (c) the price per share to be received by Applicant for the Common Stock is reasonable, and the compensation to be paid to the underwriter under the bid Applicant proposes to accept for underwriting the proposed issuance of Common Stock is reasonable.

(2) The proposed issuance and sale of Bonds, Preferred Stock, and Common Stock as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

The Commission orders:

(A) The price to be received by Applicant for the proposed Bonds and the interest rate thereof, and the price per share to be received by Applicant for the proposed issuance of Preferred Stock and the dividend rate thereof, are approved as reasonable, and the price per share to be received by the Applicant for the proposed issuance of Common Stock and the compensation to be paid to the underwriter for underwriting the issuance of that Common Stock, under the respective bids referred to above, are approved as reasonable.

(B) The proposed issuance and sale of Bonds, Preferred Stock and Common Stock referred to above, upon the terms and conditions, and for the purposes specified in the application, as supplemented by the amendment referred to above, are hereby authorized, subject only to the provisions of paragraphs (C), (D) and (E) of the Commission's order issued May 3, 1965.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CONSOLIDATED GAS SUPPLY CORPORATION,
DOCKET NO. CP65–277

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 20, 1965)

On March 8, 1965, Consolidated Gas Supply Corporation (Applicant) [1] filed in Docket No. CP65–277 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application.

Applicant proposes to construct and operate a new compressor station, to be called the Oxford Compressor Station, at a point in Doddridge County, West Virginia approximately 28 miles north of Applicant's existing Jones Compressor

---

[1] The application herein was filed by Hope Natural Gas Company (Hope). However, by Commission order accompanying Opinion No. 448, *Hope Natural Gas Company*, 33 FPC 150, Hope was authorized to acquire and operate all of the jurisdictional natural gas facilities of New York State Natural Gas Corporation, and the name of the surviving corporation was changed to Consolidated Gas Supply Corporation, effective April 1, 1965. Therefore, the certificate hereinafter granted will be issued to Consolidated Gas Supply Corporation rather than to Hope Natural Gas Company.

Station in Gilmer County, West Virginia. The proposed station will contain a total of 3,200 horsepower of compression. Applicant also proposes to construct and operate two field compressor units, each having two 660 horsepower engines for a total of 2,640 horsepower, to be located near the present Jones station.

Replacement of the Jones station is required because the engines which comprise it are old, obsolete and of differing makes and models, and its maintenance is consequently both difficult and costly. The facilities proposed herein will provide greater flexibility in Applicant's operations, and will permit estimated reductions in operating and maintenance costs of $191,367 annually.

The estimated cost of the proposed Oxford station is $1,589,000, and that of the field compressor facilities is $877,000. These costs will be financed by Applicant with cash on hand or with proceeds from the issuance of notes or stock or both to Consolidated Natural Gas Company, parent company of Applicant.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 20, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Consolidated Gas Supply Corporation, a West Virginia corporation having its principal place of business in Clarksburg, West Virginia, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 27, 1943, in Docket No. G-290 (3 FPC 994).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, Consolidated Gas Supply Corporation, authorizing construction and operation of the facilities hereinbefore described, as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon the Applicant's compliance wth all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Regulations under the Natural Gas Act, within one year from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

BLUEBONNET GAS CORPORATION, DOCKET NO. CP65-326

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 21, 1965)

On April 12, 1965, Bluebonnet Gas Corporation (Applicant) filed in Docket No. CP65-326 an application, as supplemented April 30, 1965, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and the sale of natural gas, all as more fully set forth in the application.

Applicant proposes to construct and operate one meter station in Jefferson Davis Parish, Louisiana; one meter station in Pointe Coupee Parish, Louisiana, and one meter station and approximately 4.5 miles of 4-inch pipeline in Acadia Parish, Louisiana, all for the transportation and sale of natural gas to Florida Gas Transmission Company (Florida), pursuant to an agreement between the parties dated March 15, 1965. Sales are estimated to total 4,500 Mcf per day.

Total estimated cost of Applicant's proposed facilities is $110,000, and will be financed with proceeds of $30,000 from the issuance and sale of common stock to Lumar Gas Corporation, parent company of Applicant, and by means of loans totaling $82,000.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 20, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Bluebonnet Gas Corporation, a Texas corporation having its principal place of business in Houston, Texas, upon completion of construction and commencement of operation of the proposed facilities will be engaged in the transportation of natural gas in interstate commerce and in the sale of natural gas in interstate commerce for resale for ultimate public consumption, and will be a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The proposed construction and operation of facilities and sale of natural gas by Applicant to Florida hereinbefore described, as more fully described in the application in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and sale of natural gas are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, Bluebonnet Gas Corporation, authorizing the construction and operation of facilities and the transportation and sale of natural gas to Florida Gas Transmission Company hereinbefore described, as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation and the proposed sale of natural gas undertaken, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations, within one year from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY, DOCKET NO. CP65-300

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued May 21, 1965)

On March 25, 1965, Central Illinois Public Service Company (Applicant) filed in Docket No. CP65-300 an application pursuant to Section 7(a) of the Natural Gas Act for an order directing Trunkline Gas Company (Respondent) to establish physical connection of its facilities with those which Applicant proposes to construct and to sell and deliver natural gas to Applicant for resale and distribution in the Village of Thompsonville, Franklin County, Illinois, and environs, all as more fully set forth in the application.

Applicant proposes to construct and operate approximately one and one-half miles of lateral pipeline extending from Respondent's transmission line east of the Village of Thompsonville to the village and the necessary distribution facilities in the area to be served. Applicant has received a certificate of public convenience and necessity from the Illinois Commerce Commission and a franchise from the Village of Thompsonville for its project.

Applicant's estimated peak day and annual natural gas requirements in Mcf to serve the Village of Thompsonville and environs for the first three years of operation are as follows:

	First year	Second year	Third year
Peak day	78	124	158
Annual	7,500	11,985	15,200

Respondent has not filed any objection to the application. Applicant states that Respondent will be required to install a metering and regulating station at a cost of $17,000.

After due notice no petition to intervene, notice of intervention or protest to the granting of the application has been received.

The Commission finds:

(1) Applicant, Central Illinois Public Service Company, is a corporation organized and existing under the laws of the State of Illinois and is legally empowered to construct and operate natural gas facilities and to sell and distribute natural gas in the Village of Thompsonville, Franklin County, Illinois, and environs.

(2) Respondent, Trunkline Gas Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 29, 1949, in Docket No. G–882 (8 FPC 250).

(3) It is necessary and desirable in the public interest to direct Respondent to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicant and to sell and deliver to Applicant up to 158 Mcf of natural gas per day for resale and distribution in the Village of Thompsonville, Franklin County, Illinois, and environs, as hereinafter ordered.

(4) The requirement that Trunkline serve Applicant, as proposed, will not place undue burden upon Trunkline nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Trunkline Gas Company be and it is hereby directed to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicant, as hereinbefore described and as more fully described in the application in this proceeding, together with such metering, regulating and appurtenant facilities as may be required therefor and to sell and deliver up to 158 Mcf of natural gas per day to Applicant pursuant to Respondent's appropriate rate schedule on file with the Commission.

(B) Applicant shall commence the purchase of gas within one year from the date of this order.

(C) Respondent shall advise the Commission of the date of commencement of service within ten days thereof.

(D) Respondent shall execute and file with the Commission a service agreement with Applicant in accordance with Part 154 of the Commission's Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP65–315

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 21, 1965)

On April 6, 1965, El Paso Natural Gas Company (Applicant) filed in Docket No. CP65–315 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of four measuring and regulating stations and the sale and delivery of natural gas through one station to Intermountain Gas Company (Intermountain) and through three stations to Northwest Natural Gas Company (Northwest Natural), all for resale and distribution, as more fully set forth in the application.

Applicant proposes to sell and deliver natural gas to Intermountain for resale to Flying H Farms, Inc., located in Elmore County, Idaho, for irrigation use, and to Northwest Natural for resale and distribution in the communities of Carson, Washington, and Molalla, Jefferson and Scio, Oregon, and their respective environs, to residential, commercial and industrial consumers.

The four measuring and regulating stations which Applicant proposes to construct have a total estimated cost of $34,700, which is to be financed out of current working funds. Applicant will make deliveries at the outlet of these facilities.

The facilities proposed to be constructed by Intermountain and Northwest Natural will consist of transportation and distribution facilities which will cost approximately $168,530 and $507,100, respectively.

Applicant states that Intermountain and Northwest Natural have received all necessary franchises and authorizations, from all regulatory bodies having jurisdiction, which are necessary for their proposed operations.

The estimated peak day and annual natural gas requirements of Intermountain and Northwest Natural are as follows:

	Requirements in Mcf			
	Intermountain		Northwest Natural	
	Summer peak day	Annual	Winter peak day	Annual
First year	2,448	255,000	1,206	201,506
Second year	3,456	360,000	1,255	222,166
Third year	4,512	420,000	1,302	227,830

Due notice of the filing of the application was published in the Federal Register on April 20, 1965, and amended on April 22, 1965 (30 F.R. 5610 and 5717). No protest or petition to intervene has been filed in this proceeding.

On April 26, 1965, the Public Utility Commissioner of Oregon filed a notice of intervention and waiver of hearing in support of the application as filed. No other notices of intervention have been filed.

At a hearing held on May 20, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 29, 1942, in Docket Nos. G-242 and G-257 (3 FPC 851).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are sub-

ject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the transportation and sale of natural gas by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, El Paso Natural Gas Company, authorizing the construction and operation of facilities and the transportation and sale of natural gas, as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation and the transportation and sale of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date of this order.

(D) The certificate issued hereby is granted on the express condition that the interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

ILLINOIS POWER COMPANY, DOCKET NO. CP65-286

FINDINGS AND ORDER DIRECTING SALE OF NATURAL GAS

(Issued May 21, 1965)

On March 15, 1965, Illinois Power Company (Applicant), filed in Docket No. CP65-286 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) to sell and deliver to Applicant, through existing facilities, up to 1,563 Mcf on a peak day and 166,400 Mcf annually, the stated third year natural gas requirements of Applicant for resale and distribution in the villages of Altona, Wataga, Rio and Oneida, Knox County, Illinois; the village of North Henderson, Mercer County, Illinois; and the village of Alexis, Mercer

and Warren Counties, Illinois, and their environs, all as more fully set forth in the application.

Applicant proposes to construct a total of 32.6 miles of 2-inch, 3-inch, and 4-inch pipe, extending to the above communities from an existing point of delivery from Michigan Wisconsin near New Windsor, Illinois.

Estimated volumes of natural gas necessary to meet Applicant's annual and peak day requirements for the initial three year period of proposed operations are stated to be:

	First year	Second year	Third year
Annual (Mcf)	67,789	142,138	166,400
Peak day (Mcf)	963	1,250	1,563

Total estimated cost of Applicant's proposed construction, including transmission facilities and distribution systems, is $816,930, and will be financed with funds available for construction purposes.

Applicant has obtained necessary franchises to supply natural gas in said communities and on March 2, 1965, the Illinois Commerce Commission granted Applicant a certificate to construct and operate the necessary facilities and to sell gas therein.

On April 16, 1965, Michigan Wisconsin filed an answer to the application and stated therein it had no objection to the entry of an order requiring it to provide the requested service.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on March 25, 1965 (30 F.R. 3891). No protest, petition to intervene or request for hearing has been filed in this proceeding.

The Commission finds:

(1) Michigan Wisconsin Pipe Line Company, a Delaware corporation having its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order dated November 30, 1946 in Docket No. G-699 (5 FPC 553).

(2) Applicant, Illinois Power Company, an Illinois corporation having its principal place of business in Monticello, Illinois, is a corporation legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Michigan Wisconsin to sell and deliver to Applicant, under a service agreement to be executed by Applicant with Michigan Wisconsin in accordance with the Commission's Regulations, up to 1,563 Mcf of natural gas on a maximum day and 166,400 Mcf annually for distribution and resale as hereinbefore described.

(4) Applicant should be prepared to receive natural gas from Michigan Wisconsin for distribution in the villages of Altona, Wataga, Rio and Oneida, Knox County, Illinois; the village of North Henderson, Mercer County, Illinois; and the village of Alexis, in Mercer and Warren Counties, Illinois, and their environs, within one year from the date of the issuance of this order.

The Commission orders:

(A) Michigan Wisconsin Pipe Line Company be and is hereby directed to sell and deliver up to 1,563 Mcf of natural gas on a maximum day and 166,400 Mcf annually to Applicant under a service agreement to be executed by Applicant with

Michigan Wisconsin in accordance with the Commission's Regulations, for transportation, distribution and resale as hereinbefore described. Such service shall be rendered pursuant to Michigan Wisconsin's presently filed appropriate rate schedule.

(B) Michigan Wisconsin shall report to the Commission the date of commencement of service to Applicant within 15 days after such service begins.

(C) Applicant shall be prepared to receive service as directed herein one year from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

MILWAUKEE GAS LIGHT COMPANY, DOCKET NO. CP65-260

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued May 21, 1965)

On March 1, 1965, Milwaukee Gas Light Company (Applicant) filed in Docket No. CP65-260 an application as supplemented on April 14, 1965, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) to establish physical connection of its natural gas transmission facilities with the facilites proposed to be constructed by Applicant, and to sell and deliver up to 125 Mcf of natural gas to Applicant in the third year for resale and distribution in the village of Cecil, Shawano County, Wisconsin, as more fully set forth in the application.

Applicant seeks physical connection of its proposed facilities with a 0.46 mile section of 4-inch transmission line to be constructed by Michigan Wisconsin,[1] and the sale and delivery of the third year maximum day requirements of Applicant for Cecil, Wisconsin of 125 Mcf of gas at such connection. A municipal franchise has been obtained from the village. Approval of the Public Service Commission of Wisconsin was granted to Applicant on April 6, 1965.

Applicant proposes to purchase volumes of natural gas from Michigan Wisconsin under Michigan Wisconsin's Rate Schedule ACQ-1 to meet the requirements of Cecil. The volumes of natural gas necessary to meet maximum day and annual requirements for the first three years of operation are as follows:

	(Mcf at 14.73 psia)		
	First year	Second year	Third year
Maximum day	46	97	125
Annual	9,578	14,371	17,202

Total estimated cost of Applicant's proposed distribution system is $59,632, and will be defrayed from its own funds.

Michigan Wisconsin filed an answer in this proceeding on March 27, 1965, stating it had no objection to the granting of the requested order for service.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on March 18, 1965 (30 F.R.

---

[1] Segment to be constructed by Michigan Wisconsin pursuant to its "10-cent formula".

3617). No protest, petition to intervene, or request for hearing has been filed in this proceeding. The Public Service Commission of Wisconsin filed a notice of intervention on April 7, 1965, stating a hearing was not requested. No other notices of intervention have been received.

The Commission finds:

(1) Michigan Wisconsin Pipe Line Company, a Delaware corporation having its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order dated November 30, 1946 in Docket No. G–669 (5 FPC 953).

(2) Applicant, Milwaukee Gas Light Company, a Wisconsin corporation having its principal place of business in Milwaukee, Wisconsin, is a corporation legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Michigan Wisconsin to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicant, and to sell and deliver up to 125 Mcf of natural gas on a maximum day to Applicant under a service agreement to be executed by Applicant with Michigan Wisconsin in accordance with the Commission's Regulations, for distribution and resale as hereinbefore described and as more fully described in the application in this proceeding.

(4) Applicant should be prepared to receive natural gas from Michigan Wisconsin for distribution in the village of Cecil, Shawano County, Wisconsin within one year from the date of the issuance of this order.

The Commission orders:

(A) Michigan Wisconsin Pipe Line Company be and is hereby directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant, as hereinbefore described, and to sell and deliver up to 125 Mcf of natural gas on a maximum day to Applicant under a service agreement to be executed by Applicant with Michigan Wisconsin in accordance with the Commission's Regulations for transportation, distribution and resale as hereinbefore described. Such service shall be rendered pursuant to Michigan Wisconsin's presently filed appropriate rate schedule.

(B) Michigan Wisconsin shall report to the Commission the date of commencement of service to Applicant within 10 days after such service begins.

(C) Applicant shall be prepared to receive service as directed herein within one year from the date of issuance of this order.

(D) Michigan Wisconsin shall file pursuant to Part 154 of the Commission's Regulations a superseding service agreement reflecting the increased services ordered herein and the new delivery point.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

MINNESOTA POWER & LIGHT COMPANY, DOCKET NO. E–7219

ORDER AUTHORIZING THE ISSUANCE OF COMMON STOCK

(Issued May 21, 1965)

Minnesota Power & Light Company (Applicant), incorporated under the laws of the State of Minnesota with its principal business office at Duluth, Minnesota, filed an application on April 15, 1965, with the Federal Power Commission, seeking an order pursuant to Section 204 of the Federal Power Act authorizing the issuance of 1,716,094 additional shares of Common Stock without par value.

Applicant is principally engaged in the generation, purchase transmission, distribution and sale of electricity in central and northeastern Minnesota. Applicant interchanges energy with its subsidiary, Superior Water, Light and Power Company located in Superior, Wisconsin, at the Minnesota-Wisconsin border.

Applicant proposes to amend its Articles of Incorporation so as to (1) split and change the number of shares of its Common Stock, no par, outstanding at the close of business on May 26, 1965, into twice such number, and (2) increase from 3,000,000 to 8,000,000 the number of shares of Common Stock, no par, which it is authorized to issue. According to the application, the amendment to the Articles of Incorporation will be submitted to the Applicant's stockholders for their approval at the annual meeting to be held on May 11, 1965. Applicant proposes that on or about June 16, 1965, all holders of Common Stock of record at the close of business on May 26, 1965, will be sent certificates for the additional shares of Common Stock, no par, to which they will become entitled as a result of the two-for-one split. According to the application, the Applicant will not receive any proceeds from the issuance of the Common Stock.

The Applicant believes that the proposed split of its Common Stock with the resulting lower market price per share, should result in a broadening of public interest in the Stock, an increase in the number of stockholders and a greater availability of shares for purchase and sale and hence should prove beneficial to the stockholders and the Company. It also believes that the resultant improved and expanded market should also serve to facilitate future Common Stock financing by the Company.

Written notice of the application has been given to the Minnesota Railroad and Warehouse Commission and to the Governor of that State. Notice has also been given by publication in the Federal Register on April 28, 1965 (30 F.R. 5913), stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest on or before May 6, 1965, with the Federal Power Commission, Washington, D.C. 20426. No protest, petition, or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, owns and operates facilities for the transmission and sale at wholesale of electric energy generated in the State of Minnesota and consumed outside thereof, and for the transmission and sale at wholesale of electric energy generated in the State of Wisconsin and consumed in the State of Minnesota, all of which facilities are in addition to, and do not include facilities used for the generation of electric energy, facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or facilities for the transmission of electric energy consumed wholly by the transmitter, and Applicant is, therefore, a public utility within the meaning of that term as used in Section 204 of the Federal Power Act.

(2) The proposed issuance of 1,716,094 additional shares of Common Stock, no par, to accomplish a two-for-one split of presently outstanding Common Stock, all as described above, will constitute an issuance of securities within the purview of Section 204 of the Federal Power Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State Commission within the meaning of Section 204(f) of the Act; and the proposed issuance of Common Stock, as described above, is, therefore, not exempt by virtue of that subsection from the requirements of Section 204 of the Act.

(4) The proposed issuance of Common Stock, as described above, is exempt from the competitive bidding requirements of Section 34.1a of the Commission's Regulations under the Federal Power Act by reason of Paragraph 34.1a(a)(1) thereof.

(5) The proposed issuance of Common Stock, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility, and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

(6) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The proposed issuance of 1,716,094 additional shares of Common Stock, no par value, to accomplish a two-for-one split of presently outstanding Common Stock, as described above, is hereby authorized, subject to the provisions of this order.

(B) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission or any other regulatory body.

(C) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect of any securities to which this order relates.

Before Commissioner: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

PENNSYLVANIA POWER & LIGHT COMPANY, DOCKET NO. E-7214

ORDER AUTHORIZING ACQUISITION, MERGER OR CONSOLIDATION OF FACILITIES

(Issued May 21, 1965)

Pennsylvania Power & Light Company (Applicant), filed an application on March 22, 1965, with the Federal Power Commission, pursuant to Section 203 of the Federal Power Act, seeking an order authorizing it to acquire certain electric facilities of the Woolrich Woolen Mills (Woolrich), and to consolidate and merge such facilities with those of Applicant.

Applicant is incorporated under the laws of the Commonwealth of Pennsylvania with its principal business office at Allentown, Pennsylvania, and is engaged principally in the generation, transmission, distribution and sale of electric energy serving a 10,000 square mile territory which embraces 29 counties, including Clinton County, in central eastern Pennsylvania, which has a population of approximately 2,265,000.

Woolrich is a corporation organized under the laws of the Commonwealth of Pennsylvania and is engaged in the manufacture of woolen products in Clinton County, Pennsylvania. Initially, Woolrich supplied its own electric energy requirements for its manufacturing operations and by extending its lines, supplied the residences of the adjacent village of Woolrich which at that time were occupied chiefly by "mill" people. Woolrich has continued to supply the village even though it has been purchasing for many years its entire requirements from Applicant. At present, many of the residences of the village are occupied by people who have no relationship by way of ownership or employment with the mill. Woolrich has never filed any of its rates or charges for its electric service in the village with any regulatory commission.

The electric facilities to be acquired are located in the Village of Woolrich, Pine Creek Township, Clinton County, Pennsylvania, and consist of a series street lighting system made up of both overhead and underground facilities and grounded neutral overhead electric distribution system, of both single and three phase construction, providing service to 189 residential and 13 small commercial consumers. The facilities to be acquired comprise all of the electric facilities of Woolrich not directly associated with mill operation.

Applicant represents that pursuant to an agreement dated January 26, 1965 between Applicant and Woolrich, it has agreed to acquire these facilities for a cash consideration of $140,000, which amount according to the Applicant was arrived at by arm's-length negotiations. The consideration will be $78,104 in excess of the estimated original cost of the subject facilities of $61,896 and, therefore, an acquisition adjustment of $78,104 will be created by the transaction. The Applicant proposes to eliminate the acquisition adjustment by a debit to Account 425, Miscellaneous Amortization.

Upon acquisition, Applicant proposes to tie this system directly to its own power sources and supply all consumers as Applicant's customers. Applicant states that this will result in decreases in bills for residential electric service. Applicant also states that it will supply a street lighting service pursuant to its filed tariffs and agreement with the local political subdivision. According to the application, consummation of the proposed transaction will not require any formal change in any contract for the purchase, sale or interchange of electric energy, except that Applicant, as successor, will assume Woolrich's rights and obligations to supply street lighting in the village.

Applicant submits that the proposed acquisition will be in the public interest because it will mean that the electric service to the residents of the village of Woolrich will be provided by a public utility company and Applicant believes that supply of essential electric service by a public utility of its size and competence, fully aware of its legal obligations to provide present and future service on an adequate, continuous, safe and economic basis, is in the interest of customers and the public generally.

Written notice of the application has been given to the Public Utilities Commission of Pennsylvania and to the Governor of that State. Notice has also been published in the Federal Register on April 8, 1965 (30 F.R. 4566), stating that any person desiring to be heard or to make any protest with reference to the application, shall file petitions or protests on or before April 23, 1965, with the Federal Power Commission, Washington, D.C. 20426. No protest, petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued November 3, 1964, *Pennsylvania Power & Light Company*, Docket No. E-7173 (32 FPC 1263).

(2) By the proposed transaction, Applicant will merge or consolidate its facilities subject to the jurisdiction of the Commission with those of Woolrich, another person, within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed acquisition of facilities by Applicant, as described above, upon the terms and conditions set forth in the application, and subject to the

provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

The Commission orders:

(A) The proposed acquisition by Applicant of the aforementioned electric facilities, all as described above, is authorized and approved upon the terms and conditions and for the purposes set forth in the application subject to the provisions of this order.

(B) Applicant shall record the proposed transaction herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) This authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of costs, or any other matter whatsoever now pending or which may come before this Commission or any other regulatory body and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted by this Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

WISCONSIN POWER & LIGHT COMPANY, DOCKET NO. CP65-272

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE AND DELIVERY OF NATURAL GAS

(Issued May 21, 1965)

On March 8, 1965, Wisconsin Power & Light Company (Applicant), filed in Docket No. CP65-272 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Michigan Wisconsin Pipe Line Co. (Michigan Wisconsin) to establish physical connection of its natural gas transmission facilities with the facilities proposed to be constructed by Applicant, and to sell and deliver natural gas to Applicant for resale and distribution in Amherst and Amherst Junction, Wisconsin, all as more fully set forth in the application.

Applicant proposes to construct (1) a regulator station, (2) 3.7 miles of distribution mains, (3) 1.44 miles of 2" lateral pipe leading from the Michigan Wisconsin gate station to Amherst Junction, and (4) .6 mile of 4" lateral leading from the gate station to Amherst for a total third-year construction cost of $124,488 (including the distribution systems). This expenditure will be financed from cash on hand or funds borrowed from the sales of securities as may be necessary as part of Applicant's over-all construction program.

Applicant seeks physical connection of its proposed facilities with a 4-inch, .44 mile lateral to be constructed by Michigan Wisconsin in Portage County, Wisconsin, and the sale and delivery of Applicant's third-year requirements.

Estimated volumes of natural gas necessary to meet Applicant's annual and peak day requirements for the initial three-year period of proposed operations will be purchased under Michigan Wisconsin's Rate Schedule ACQ–1 and are stated to be:

	First year	Second year	Third year
Annual (Mcf)	17,827	37,478	42,960
Peak day (Mcf)	149	309	355

On March 24, 1964, the villages of Amherst and Amherst Junction granted Applicant franchises to supply natural gas in said villages and on December 30, 1964, the Public Service Commission of Wisconsin, in Docket No. CA–4430, granted Applicant a certificate to construct and operate the necessary facilities and to sell gas to the public in the above-mentioned villages.

On March 28, 1965, Michigan Wisconsin filed an answer to the application and stated therein it had no objection to the entry of an order requiring it to provide the requested service and to construct .44 mile of 4-inch lateral pipeline connecting its system to the proposed facilities of the Applicant.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on March 20, 1965 (30 F.R. 3731). No protest, petition to intervene or request for hearing has been filed in this proceeding.

The Commission finds:

(1) Michigan Wisconsin Pipe Line Company, a Delaware corporation having its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order dated November 30, 1946 in Docket No. G–669 (5 FPC 953).

(2) Applicant, Wisconsin Power & Light Company, a Wisconsin corporation having its principal place of business in Madison, Wisconsin, is a corporation legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Michigan Wisconsin to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicant, and to sell and deliver to Applicant under a service agreement to be executed by Applicant with Michigan Wisconsin in accordance with the Commission's Regulations, up to 355 Mcf of natural gas on a maximum day and 42,960 Mcf annually for distribution and resale as hereinbefore described.

(4) Applicant should be prepared to receive natural gas from Michigan Wisconsin for distribution in Amherst and Amherst Junction, Wisconsin, within one year from the date of the issuance of this order.

The Commission orders:

(A) Michigan Wisconsin Pipe Line Company be and is hereby directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant, as hereinbefore described, and to sell and deliver up to 355 Mcf of natural gas on a maximum day and 42,960 Mcf annually to Applicant under a service agreement to be executed by Applicant with Michigan Wisconsin in accordance with the Commission's Regulations, for transportation, distribution and resale as hereinbefore described. Such service shall be rendered pursuant to Michigan Wisconsin's presently filed appropriate rate schedule.

(B) Michigan Wisconsin shall report to the Commission the date of commencement of service to Applicant within 15 days after such service begins.

(C) Applicant shall be prepared to receive service as directed herein within one year from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

AREA RATE PROCEEDING, ET AL. (SOUTHERN LOUISIANA AREA), DOCKET NO. AR61-2, ET AL.

ORDER REJECTING APPEAL FROM PRESIDING EXAMINER'S RULING

(Issued May 24, 1965)

On May 6, 1965, Sun Oil Company (Sun) filed with the Commission a document entitled "Appeal from Ruling of Presiding Examiner Denying Right of Cross-Examination." The appeal seeks Commission review of rulings made by the presiding examiner during the cross-examination of staff witness Dr. Felix I. Shaffner, the staff's rate of return witness, under which rulings counsel were denied the right to pursue certain lines of cross-examination. The appeal also seeks in the alternative an order directing the examiner to strike the testimony of staff witness Shaffner and the exhibits he sponsored. On May 17, 1965, Hunt Oil Company, *et al.*, (Hunt) filed an adoption of and joinder in the Sun appeal.

Section 1.28(a) of the Commission's Rules of Practice and Procedure provides: "Rulings of presiding officers may not be appealed from during the course of hearings except in extraordinary circumstances where prompt decision by the Commission is necessary to prevent detriment to the public interest." Sun assets that it requested the presiding examiner to certify his rulings to the Commission but that he refused to do so.

Questions as to the admissibility or exclusion of evidence or the propriety of cross-examination must be determined initially by the presiding examiner and his rulings are subject to our review at the time of consideration of the examiner's decision. In the absence of extraordinary circumstances, we shall not examine on appeal interlocutory rulings with respect to matters of the type hereinbefore mentioned. The appeal sets forth no facts which would warrant our consideration of the matter at this time and the appeal should therefore be rejected.

The Commission orders:

The appeals filed herein by Sun Oil Company on May 6, 1965, and by Hunt on May 17, 1965, are rejected.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

ARKANSAS LOUISIANA GAS COMPANY, DOCKET NO. CP65-206

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF SERVICE AND ACCEPTING TARIFF SHEETS AND NOTICES OF CANCELLATION FOR FILING

(Issued May 24, 1965)

On January 7, 1965, Arkansas Louisiana Gas Company (Applicant) filed in Docket No. CP65-206 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain sales and transportation of natural gas in interstate commerce, all as more fully set forth in the application.

Applicant proposes to abandon field sales and transportation of natural gas made pursuant to the following rate schedules:

Purchaser	Applicant's Rate Schedule	Tariff
Interstate Natural Gas Company	X–1	Original Volume No. 1
United Gas Pipe Line Company	T–1	Original Volume No. 1
Texas Eastern Transmission Corporation	X–2	Original Volume No. 2
United Gas Pipe Line Company	XFS–4	Original Volume No. 2
United Gas Pipe Line Company	XFS–7	Original Volume No. 2
United Gas Pipe Line Company	XFS–8	Original Volume No. 2

The service agreement for each sale has been terminated by agreement between Applicant and the purchaser. Applicant has filed notices of cancellation of the related rate schedules.

In addition, Applicant seeks permission and approval to abandon the transportation service previously rendered by Consolidated Gas Utilities Corporation (Consolidated) for United Gas Pipe Line Company pursuant to Rate Schedule X–6 of Consolidated's FPC Gas Tariff Original Volume No. 2.[1]

On January 7, 1965, Applicant filed with the Commission Notices of Cancellation of Rate Schedules X–1, T–1, X–2, XFS–4, XFS–7, XFS–8, and X–6 reflecting the termination of these sales and service.

Applicant, in order to eliminate inactive and unnecessary schedules and to achieve a more systematic and meaningful grouping of presently active rate schedules filed three superseding Tariff Volumes which it requests be accepted for filing.

After due notice no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 20, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence including the application and exhibits, submitted in support of the authorizations sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Arkansas Louisiana Gas Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 5, 1943 in Docket No. G–252 (3 FPC 910).

(2) The sales and service proposed to be abandoned, as hereinbefore described and as more fully described in the application herein, were performed in interstate commerce, subject to the jurisdiction of the Commission, and the abandonment thereof is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid sales and service is permitted by the public convenience and necessity and approval therefor should be granted as hereinafter ordered.

(4) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the new FPC Gas Tariff, First Revised Volume Nos. 1 and 2 and Original Volume No. 3 of Arkansas Louisiana Gas Company and Notices of Cancellation of Rate Schedules X–1, T–1, X–2, XFS–4, XFS–7, XFS–8 and X–6 be accepted for filing.

---

[1] Consolidated was merged into Applicant as of August 31, 1960, at which time Applicant succeeded to Consolidated's contractual rights and obligations.

The Commission orders:

(A) Permission for and approval of the abandonment of the service hereinbefore described, as more fully described in the application in this proceeding, are hereby granted.

(B) Applicant's new FPC Gas Tariff, First Revised Volume Nos. 1 and 2 and Original Volume No. 3 and the Notices of Cancellation of its Rate Schedules X-1, T-1, X-2, XFS-4, XFS-7, XFS-8, and X-6 are hereby accepted for filing effective as of the date of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CONSOLIDATED GAS SUPPLY CORPORATION,[1] DOCKET NO. CP65-262

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 24, 1965)

On March 1, 1965, New York State Natural Gas Corporation (Applicant) filed in Docket No. CP65-262 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of (1) approximately 5.7 miles of 30-inch pipeline extending from the present terminus of Applicant's Line No. 550 in the Town of Cuyler, Cortland County, New York, in a northeasterly direction and parallel to Line No. 30 to the DeRuyter Connection in Madison County, New York; (2) an additional new 1,100 Hp engine at the E. M. Borger Compressor Station in the Town of Dryden, Tompkins County, New York; (3) approximately 6.7 miles of 20-inch pipeline (to be known as Line No. 554) parallel to Line Nos. 14 and 24, extending from the Genessee Falls Gate to the Randall Gate, Wyoming County, New York; and (4) approximately 1.32 miles of 26-inch pipeline extending east from the Sabinsville Compressor Station, Tioga County, Pennsylvania, to replace 20-inch pipeline in Line No. 34, all as more fully set forth in the application on file with the Commission.

The proposed facilities will be utilized in meeting the peak day requirements of Applicant's customers beginning with the 1965-66 winter season.

The estimated cost of the proposed facilities is $1,483,000; less an estimated $41,295 net salvage to be realized from the removal of the segment of 20-inch pipeline from Line No. 34, and will be defrayed from cash on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 20, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorizations, and upon consideration of the record,

The Commission finds:

(1) Applicant, New York State Natural Gas Corporation, a New York corporation and a "natural-gas company" within the meaning of the Natural Gas Act, was merged into Hope Natural Gas Company and the name of Consolidated Gas Supply Corporation substituted for that of Hope Natural Gas Company by Commission order issued February 2, 1965 (33 FPC 150).

---

[1] On April 1, 1965, pursuant to Commission authorization in Docket No. CP63-272, New York State Natural Gas Corporation merged with its affiliate, Hope Natural Gas Company, and the name of the surviving company was changed to Consolidated Gas Supply Corporation.

(2) Consolidated Gas Supply Corporation, a West Virginia corporation with its principal place of business in Clarksburg, West Virginia, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued February 2, 1965 (33 FPC 150).

(3) The facilities herein described and as more fully described in the application and exhibits in this proceeding, will be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation of natural gas are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The aforesaid proposed construction and operation of facilities is required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(6) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, Consolidated Gas Supply Corporation, authorizing the construction and operation of facilities as more fully described in the application in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

NATIONAL FUELS CORPORATION AND WARREN PETROLEUM CORPORATION, DOCKET NO. G-20426

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF CONTRACT AMENDMENT, PROVIDING FOR REFUNDS, AND TERMINATING PROCEEDING

(Issued May 24, 1965)

On April 12, 1965, National Fuels Corporation (National) submitted an offer of settlement in this proceeding pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure involving a proposed increased rate for sales of natural gas made to Lone Star Gas Company from the Madill Plant, Cumberland Field, Marshall and Bryan Counties, Oklahoma. The proposed increased rate of 16.8¢ per Mcf of natural gas was suspended by order of the Commission for the statutory period, and made effective subject to refund by proper motion on May 26, 1960.

Under the terms of the offer, National proposes a settlement rate of 14.0¢ per Mcf of gas at 14.65 psia; a moratorium on future increased rate filings until March 1, 1968; to refund all monies collected subject to refund above the settlement rate from August 1, 1961, to the date of issuance of this order;[1] and to amend its contract with Lone Star to delete the favored-nation provision therefrom and to change the periodic pricing provisions to provide for a 1.0¢ increase on January 1, 1968, and a similar increase at two five-year intervals thereafter.

The proposed settlement rate exceeds the applicable area increased rate ceiling as set forth in the Commission's Statement of General Policy No. 61–1, 24 FPC 818. However, National submitted data with its offer showing that it has added substantial supplies of natural gas in order to meet its contract commitment to Lone Star. In fact, National states, 77.6% of the volumes of natural gas delivered to Lone Star in 1964, came from wells connected to National's plant since 1954. In company-wide settlements, we have often approved proposed settlement rates which exceeded the applicable area increased rate ceiling where substantial productive acreage was added under the contract since 1954, or where the volumes of gas sold under the contracts were increased substantially.[2] Here we believe that the additional wells from which National purchases gas for plant use and delivery to Lone Star to be sufficiently analogous to permit an exception to the applicable area ceiling. Therefore, we shall approve the proposed settlement rate of 14.0¢ per Mcf of natural gas.

National acquired the Madill Plant on December 31, 1962, from Warren Petroleum Corporation (Warren) but did not assume Warren's obligation to refund monies collected subject to refund prior to that time. However, Warren filed its concurrence in National's proposal on April 26, 1965. Consequently, we shall order Warren to refund its proportionate share of the refund monies set forth above.

We desire to make it clear that acceptance of National's offer of settlement shall not be construed as approval of any future increased rate filed in accordance with its reservation of the right to file increases to cover future tax increases or periodic increases as provided in its offer of settlement, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving National's rate and rate schedule.

The Commission finds:

The proposed settlement of the above-designated proceeding, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by National on April 12, 1965, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed with the Commission by National April 12, 1965, and concurred in by Warren on April 26, 1965, is hereby approved in accordance with the provisions of this order.

(B) National shall file, within 30 days from the date of issuance of this order, an executed contractual amendment to its FPC Gas Rate Schedule No. 1, eliminating the favored-nation, and the present periodic escalation provisions therefrom and substituting therefor periodic escalations as specified in its offer of settlement. The contractual amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

---

[1] The refunds will be approximately $856,482, plus interest to May 1, 1965.

[2] *E.g., Sohio Petroleum Company,* Docket No. G–8488, *et al.,* 30 FPC 1623.

(C) National and Warren shall each compute for the respective periods in which it has refund obligations the difference between the rate collected subject to refund and the settlement rate for the period from August 1, 1961, to the date of this order for sales of natural gas to Lone Star from the Madill Plant, and within 30 days from the date of this order each shall submit a report to the Commission, and serve a copy on Lone Star, setting out the amount of refunds each has computed it is obligated to make (showing separately the principal and interest) the bases used for such determination and the period covered.

(D) National and Warren shall each, within 30 days from the date of issuance of this order, refund with applicable interest to May 1, 1965, to Lone Star the monies each has computed in accordance with paragraph (C) above, and each shall within 10 days thereafter file with the Commission a release from Lone Star showing receipt of the refunds in conformity with the settlement proposal as approved herein.

(E) Upon notification by the Secretary of the Commission that National and Warren have complied with the terms and conditions of the order, the rate and charge of 14.0¢ per Mcf at 14.65 psia, specified in National's offer of settlement, shall be effective as of the date of issuance of this order, and the above designated proceeding shall be deemed terminated.

(F) The acceptance by the Commission of National's offer of settlement, with which Warren concurred, is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against National or Warren, including area rate or other similar proceedings.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP65-322

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 24, 1965)

On April 8, 1965, Natural Gas Pipeline Company of America (Applicant) filed in Docket No. CP65-322 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application.

Applicant proposes to construct and operate one 2-inch side tap, approximately 200 feet of 3-inch lateral and a meter station in Clinton County, Illinois, for the sale of natural gas to Illinois Power Company (Illinois), an existing customer, for resale and distribution in Shattuc, Illinois.

In addition Applicant proposes to construct and operate one 2-inch side tap, approximately 200 feet of 3-inch lateral and a meter station in Perry County, Illinois, for the sale of natural gas to Illinois for resale and distribution in Tamaroa, St. Johns, Sunfield and Holden, Illinois.

The estimated third year annual and peak day requirements of Illinois for the proposed service are 51,523 Mcf and 638.5 Mcf respectively, and will be provided from quantities of natural gas which Applicant has heretofore been authorized to sell and deliver to Illinois.

Illinois has received all necessary State and local authorizations for the service proposed herein.

Total estimated cost of Applicant's proposed construction is $19,160, and will be financed with funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 20, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore, found by the Commission in its order of October 13, 1942, in Docket No. G-235 (3 FPC 830).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof are subject to the requirement of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed construction and operation of facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Natural Gas Pipeline Company of America, to construct and operate the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP65-290

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT

(Issued May 24, 1965)

On March 17, 1965, Southern Natural Gas Company (Applicant) filed in Docket No. CP65-290 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain natural gas facilities, all as more fully set forth in the application on file with the Commission.

Applicant proposes to abandon, by sale to Atlanta Gas Light Company (Atlanta), its Dry Branch lateral line and the Georgia Kaolin No. 1 Meter Station, located at Dry Branch, Georgia.

Atlanta presently utilizes gas delivered by Applicant from the Dry Branch lateral for service to Georgia Kaolin Company. After the proposed abandonment, such service will be rendered by Atlanta with natural gas received through Applicant's existing East Macon Meter Station.

Atlanta proposes to utilize the subject facility for future sales of natural gas in the vicinity of Dry Branch, Georgia.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 20, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Southern Natural Gas Company, a Delaware corporation having its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 6, 1942, in Docket No. G-296 (3 FPC 822).

(2) The facilities proposed to be abandoned, as hereinbefore described and as more fully described in the application herein, are used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and approval thereof should be granted as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment of the facilities hereinbefore described, as more fully described in the application in this proceeding, are hereby granted to Applicant.

(B) Applicant shall advise the Commission of the date of abandonment of the facilities authorized in paragraph (A) above within ten days of such abandonment.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP65-319

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 24, 1965)

On April 6, 1965, Southern Natural Gas Company (Applicant) filed in Docket No. CP65-319 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the 12 month period from August 7, 1965 through August 6, 1966, and operation of routine field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof in the general area of its existing system, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting new and existing supplies of natural gas in various producing areas generally co-extensive with its system.

The total cost of the facilities covered by this application will not exceed $3,000,000, with no single project to exceed a cost of $500,000, and will be financed with general funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 20, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Southern Natural Gas Company, a Delaware corporation having its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 6, 1942, in Docket No. G-296 (3 FPC 822).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization hereinafter granted, a statement in compliance with Section 157.7(b)(3) of the Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act

and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(7) The authorization hereinafter granted should be limited to construction during the 12 month period from August 7, 1965 through August 6, 1966, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $3,000,000, with no single project to exceed a cost of $500,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Southern Natural Gas Company, to construct during the 12 month period from August 7, 1965 through August 6, 1966, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization hereby granted a statement in compliance with Section 157.7(b)(3) of the Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the 12 month period from August 7, 1965 through August 6, 1966, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $3,000,000, with no single project to exceed a cost of $500,000.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP61-328

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 24, 1965)

On March 5, 1965, Transcontinental Gas Pipe Line Corporation (Petitioner) filed in Docket No. CP61-328 a petition to amend the order of the Commission issued in said docket May 17, 1962, 27 FPC 992, which order authorized Petitioner, among other things, to construct and operate 8.5 miles of 8-inch pipeline extending from its existing facilities in the Block 23 Field to the Block 48 Field, South Marsh Island Area, offshore Louisiana.

By the instant filing, Petitioner seeks amendment of the above order by requesting authorization to construct and operate 10.06 miles of 16-inch line in lieu of the above described 8.5 miles of 8-inch line. Petitioner also seeks authorization to construct and operate 2.35 miles of 10-inch line from Block 48 to Block 49 and a meter station in the Block 48 Field, at Block 49.

The proposed amendment will enable Petitioner to attach new reserves in Block 49 as well as the reserves in Block 48. In addition the proposed line will enable petitioner to transport, from Block 35 to Block 23, gas which was previously transported through a 2.28 mile 6-inch line destroyed by Hurricane Hilda in October, 1964.

Total estimated cost of the proposed facilities is $1,638,399, compared to a cost of $698,085 estimated for the originally authorized facilities, and will be financed with general funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the order of the Commission issued May 17, 1962, in Docket No. CP61-328, be amended as hereinafter ordered.

The Commission orders:

(A) The order of the Commission issued May 17, 1962, in Docket No. CP61-328 be and the same is hereby amended by authorizing Petitioner to construct and operate the facilities hereinbefore described, both in lieu of and in addition to facilities originally authorized in said order, all as more fully set forth in the petition to amend.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP65-310

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 24, 1965)

On April 2, 1965, Transcontinental Gas Pipe Line Corporation (Applicant) filed in Docket No. CP65-310 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale to Piedmont Natural Gas Company, Inc. (Piedmont), an existing customer, of an additional volume of natural gas, and authorizing a reduction in Piedmont's present storage gas allocation, all as more fully set forth in the application.

Applicant requests authorization to increase firm sales to Piedmont by 10,000 Mcf per day, from 79,000 Mcf per day to 89,000 Mcf per day, and authorization for a reduction of 10,000 Mcf per day in Piedmont's existing allocation of storage gas, from 34,000 Mcf per day to 24,000 Mcf per day.

The proposed additional firm service has been requested by Piedmont due to the unexpected increase in its requirements resulting from the recent introduction in its market area of new rates for firm service.

No new facilities will be required, since the additional sales will be made through existing delivery points to Piedmont.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 20, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 28, 1950, in Docket No. G–1277 (9 FPC 32).

(2) The modifications in Applicant's service to Piedmont hereinbefore described, as more fully described in the application in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid modifications in Applicant's service to Piedmont are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity requires that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, Transcontinental Gas Pipe Line Corporation, authorizing the modifications in natural gas service to Piedmont hereinbefore described, as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of such Regulations.

(C) The modifications in service herein authorized shall be undertaken, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one month from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TRUNKLINE GAS COMPANY, DOCKET NO. CP65–258

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 24, 1965)

On February 26, 1965, Trunkline Gas Company (Applicant) filed in Docket No. CP65–258 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application.

Applicant proposes to construct and operate approximately 15.5 miles of 16-inch pipeline and a purchase measuring station, all located in Brooks County, Texas, for the purchase of natural gas in the Kelsey Fields, Texas area, and the transportation of such gas to Applicant's existing 20-inch Texas supply lateral.

The gas is to be purchased by Applicant from Humble Oil & Refining Company (Humble), pursuant to an agreement between the parties dated January 29, 1965.[1]

Total estimated cost of Applicant's proposed facilities is $750,000, and will be financed with funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 20, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Trunkline Gas Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 29, 1949, in Docket No. G–882 (8 FPC 250).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed construction and operation of facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) The proposed construction and operation of facilities by Applicant are issued authorizing Applicant, Trunkline Gas Company, to construct and operate the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations, within six months from the date on which this order issues.

---

[1] A temporary certificate authorizing the sale was issued to Humble in Docket No. CI65–842 by Commission letter dated April 30, 1965.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP65–187

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 24, 1965)

On December 23, 1964, United Gas Pipe Line Company (Applicant) filed in Docket No. CP65–187 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application.

Applicant proposes to construct and operate approximately 3.2 miles of 10-inch line, an orifice meter station, and a regulator station and appurtenant facilities, all in Ouachita Parish, Louisiana. These facilities will connect Applicant's existing facilities at West Monroe Junction with its 10-inch Olin Mathieson Chemical Corporation line. Applicant states that the proposed facilities are required in order to provide more efficient operation of its facilities in the West Monroe, Louisiana area, and in order to provide increased deliveries to its customers in this area, primarily to Olin Mathieson and United Gas Corporation.

Total estimated cost of Applicant's proposed facilities is $213,260, and will be financed with general funds.

On March 4, 1965, Applicant filed a supplement to the application herein, and on April 21, 1965, it filed a letter clarifying certain language contained in the supplement. The burden of such filings is that Applicant agrees that its jurisdictional customers will not be adversely affected should it fail to receive an adequate return or fail to recover the out-of-pocket costs incurred in providing natural gas service to the direct sale customers involved.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 20, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G–232 (3 FPC 863).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's com-

pliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, United Gas Pipe Line Company, authorizing construction and operation of the facilities hereinbefore described, as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Regulations under the Natural Gas Act, within one year from the date on which this order issues.

(D) Should Applicant fail to receive an adequate return or to recover out-of-pocket costs incurred in providing the direct sales of natural gas authorized herein, it shall not attempt to recover any part of the deficiency from jurisdictional sales customers.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP65-302

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued May 24, 1965)

On March 24, 1965, United Gas Pipe Line Company (Applicant) filed in Docket No. CP65-302 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon and remove certain natural gas delivery stations serving Commercial Solvents Corporation (Commercial) in Ouachita Parish, Louisiana, all as more fully set forth in the application.

The facilities to be abandoned consist of two delivery stations, with the following facilities: (1) An orifice meter and 2,851 feet of 12-inch pipeline and (2) an orifice meter station and 275 feet of 2-inch pipeline.

The reason for the proposed abandonment is that the contract for the sale of natural gas by Applicant to Commercial expired by its own terms on January 1, 1965, and Commercial has advised Applicant that it would not renew the agreement. The delivery stations are therefore no longer required.

Applicant has been advised that Commercial will purchase its gas supply from other sources.

Due notice of the filing of the application was published in the Federal Register on April 7, 1965 (30 F.R. 4510). No protest, petition to intervene or notice of intervention has been filed.

At a hearing held on May 20, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record.

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G–232 (3 FPC 863).

(2) The facilities to be abandoned, as hereinbefore described, as more fully described in the application in this proceeding, are subject to the jurisdiction of the Commission and abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and approval therefor should be granted as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, as more fully described in the application in this proceeding, be and the same are hereby granted.

(B) Applicant shall advise the Commission of the date of said abandonment within ten days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNITED GAS PIPE LINE COMPANY AND TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP65–308

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 24, 1965)

On April 1, 1965, United Gas Pipe Line Company (United) and Transcontinental Gas Pipe Line Corporation (Transco) filed in Docket No. CP65–308 a joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and the exchange of natural gas, all as more fully set forth in the application.

The facilities proposed herein consist of two separate interconnections between the systems of United and Transco, located approximately 9.5 miles apart on Transco's 30-inch main line in Pike County, Mississippi. One connection (connection A) requires the construction of approximately 1.5 miles of 6⅝-inch pipe, together with an orifice meter and related facilities, extending from Transco's 30-inch line to United's 6⅝-inch Jackson-Magnolia line, at Magnolia, Mississippi. The other connection (connection B) will consist of 220 feet of 6⅝-inch pipe, together with an orifice meter and related facilities, connecting United's East 30-inch main line with Transco's 30-inch line.

The proposed exchange is for the benefit of United. It experiences low pressure at the extremity of its Jackson-Magnolia line, near Magnolia, which can be alleviated by the receipt of gas from Transco at connection A. United will return equivalent volumes of gas to Transco at connection B.

United is liable for the entire total estimated cost of the proposed facilities of $88,302, and will pay such costs out of funds on hand. This figure includes the cost of taps to be constructed by Transco on its 30-inch line, and for which it will be reimbursed by United.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 20, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G–232 (3 FPC 863).

(2) Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 18, 1948, in Docket No. G–1143 (7 FPC 145).

(3) The proposed construction and operation of facilities and exchange of natural gas hereinbefore described, as more fully described in the application in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The aforesaid proposed construction and operation of facilities and exchange of natural gas are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) United and Transco are able and willing properly to do the acts and perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(6) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon United's and Transco's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4), and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is hereby issued to United Gas Pipe Line Company and Transcontinental Gas Pipe Line Corporation, authorizing the construction and operation of facilities and exchange of natural gas hereinbefore described, as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon United's and Transco's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation and the exchange of natural gas shall be undertaken, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations, within one year from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

VALLEY GAS TRANSMISSION, INC., DOCKET NO. CP65-283

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 24, 1965)

On March 11, 1965, Valley Gas Transmission, Inc. (Applicant) filed in Docket No. CP65-283 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction, during the 12-month period commencing with the date on which this order issues, and operation of routine field facilities to enable it to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augument Applicant's ability to act with reasonable dispatch in contracting for and connecting new and existing supplies of natural gas in various producing areas generally coextensive with its system.

The total cost of the proposed facilities will not exceed a maximum of $500,000, and no single project will exceed a cost of $50,000. The proposed facilities will be financed with funds from internal sources and by means of financing already arranged.

Applicant requests that the Commission waive Sections 157.7(b)(1)(i) and 157.7(b)(1)(ii) of the Regulations under the Natural Gas Act. These sections impose limitations on the total and single project expenditures for "budget-type" gas purchase facilities to be constructed pursuant to Section 157.7(b) of the Regulations. Applicant requests such waiver in order that it may be afforded greater flexibility in attaching reserves without delays resulting from the processing of individual certificate applications. In view of the size and nature of Applicant's operations, it appears appropriate to waive the aforementioned sections of the Regulations in this proceeding.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 20, 1965, the Commission received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Valley Gas Transmission, Inc., a Texas corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of December 29, 1960, in Docket No. G-19618 (25 FPC 233).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization hereinafter granted, a statement in compliance with Section 157.7(b)(3) of the Regulations under the Natural Gas Act.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the requirements of Sections 157.7(b)(1)(i) and 157.7(b)(1)(ii) of the Regulations under the Natural Gas Act should be waived, and that the authorization hereinafter granted should be limited to construction during the 12-month period commencing on the date on which this order issues, and that total expenditures for facilities to be constructed thereunder should be limited to a maximum of $500,000 with no single project to exceed a cost of $50,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Valley Gas Transmission, Inc., to construct during the 12-month period commencing on the date on which this order issues, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to Applicant.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) Applicant shall submit within 60 days after the expiration of the authorization herein granted, a statement in compliance with Section 157.7(b)(3) of the Regulations under the Natural Gas Act.

(D) The requirements of Sections 157.7(b)(1)(i) and 157.7(b)(1)(ii) of the Regulations under the Natural Gas Act are hereby waived, and the authorization granted in paragraph (A) above is hereby limited to construction during the 12-month period commencing on the date on which this order issues, and the total expenditures on facilities to be constructed thereunder are hereby limited to a maximum of $500,000, with no single project to exceed a cost of $50,000.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP65-166

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 25, 1965)

On March 19, 1965, Cities Service Gas Company (Applicant) filed in Docket No. CP65-166 an application to amend its then-pending application for a certificate of public convenience and necessity filed in said docket by requesting the Commission to waive the limitations set forth in Section 157.7(c)(1)(ii) of the Regulations under the Natural Gas Act and to permit Applicant to construct and operate facilities for the sale of natural gas for purposes enumerated in the subject amendment, all as more fully set forth in the application to amend.

The Commission issued a "budget-type" certificate in Docket No. CP65-166 on March 22, 1965, 33 FPC 588, authorizing Applicant to construct during the calendar year 1965 and to operate facilities for the sale of natural gas for purposes set forth in Section 157.7(c)(1)(ii) of the Regulations under the Natural Gas Act. In its application to amend Applicant requests additional authorization to construct and operate facilities for sales for uses other than those specified in Section 157.7(c)(1)(ii) of the Regulations.

Construction and operation of facilities and deliveries of natural gas for such purposes will be within the cost, time, and other limitations specified in Section 157.7(c) of the Regulations under the Natural Gas Act. Sales of natural gas for the purposes specified will not replace or supplement gas purchased from a distributor or other natural gas company.

Rather than delineate the specific purposes for which natural gas may be used under "budget-type" certificates we are of the opinion that the regulations covering the types of services which may be rendered under "budget-type" certificates should be broadened and we are so doing under an amendment of Section 157.7(c)(1)(ii) so as to permit

> Direct sales of natural gas to consumers located in areas outside the franchise area of any local distributor.

The "budget-type" certificate issued to Applicant will be amended to conform to the terms of the amended regulation.

After due notice no petition to intervene, notice of intervention, or protest to the granting of the application to amend has been received.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the order issuing a certificate of public convenience and necessity to Applicant in Docket No. CP65-166 should be amended as hereinafter ordered.

The Commission orders:

The order issuing a certificate of public convenience and necessity to Applicant in Docket No. CP65-166 be and the same is hereby amended by waiving the limitations set forth in Section 157.7(c)(1)(ii) of the Regulations under the Natural Gas Act and authorizing Applicant to construct and operate facilities and to deliver natural gas to consumers located in areas outside the franchise area of any local distributor.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

COLORADO INTERSTATE GAS COMPANY, CP61-143; NATURAL GAS PIPELINE COMPANY OF AMERICA, CP61-149; ARKANSAS LOUISIANA GAS COMPANY, CP61-163

ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND ACCEPTING TARIFF SHEETS FOR FILING

(Issued May 25, 1965)

Colorado Interstate Gas Company (Colorado Interstate) on March 29, 1965, Natural Gas Pipeline Company of America (Natural) on April 1, 1965, and Arkansas Louisiana Gas Company (Arkansas Louisiana) on March 15, 1965, filed in the above-designated dockets their respective applications to further amend an order of the Commission issued on January 3, 1963, 29 FPC 8, in Docket No. CP61-143, *et al.*, and amended December 30, 1963, 30 FPC 1615 and June 2, 1964, 31 FPC 1332, which order and amendments authorized (1) the construction and operation of certain facilities and the exchange of natural gas between Natural, Colorado Interstate and Arkansas Louisiana limited in duration to May 1, 1965; and (2) a transaction by which gas sold by Colorado Interstate to Arkansas Louisiana is delivered by Colorado Interstate to Natural in exchange for gas delivered by Natural to Arkansas Louisiana limited in duration to May 1, 1965, all as more fully set forth in their respective applications.

Colorado Interstate, Natural, and Arkansas Louisiana seek to amend the order issuing certificates of public convenience and necessity in the above dockets so as to extend the short-term interruptible field sale and exchange of natural gas authorized therein to May 1, 1966, from the present expiration date of May 1, 1965. In addition to the requested extension of duration of the exchange period and short-term interruptible field sale, Colorado Interstate and Natural seek authorization to increase the maximum daily quantity of natural gas exchanged from 25,000 Mcf daily to 35,000 Mcf daily.

The order of the Commission issued January 3, 1963, as amended December 30, 1963, and June 2, 1964, in the subject dockets authorized Colorado Interstate to sell up to 25,000 Mcf of natural gas daily to Arkansas Louisiana from the Mocane Laverne area in the Oklahoma Panhandle area on a short-term interruptible basis and the exchange of equivalent volumes of natural gas between Colorado Interstate and Natural in order to effect said sale. Deliveries are made to Arkansas Louisiana by Natural at a point in Grady County, Oklahoma for the account of Colorado Interstate, and equivalent volumes are delivered by Colorado Interstate to Natural at an interconnection between their two systems in the Mocane Field in Oklahoma.

Colorado Interstate states it continues to have a supply of gas in excess of its market requirements, and that the proposed extension of duration of the sale to Arkansas Louisiana will provide Colorado Interstate with an additional market for the years 1965 and 1966.

Colorado Interstate[1] and Natural[2] have filed revised tariff sheets reflecting an extension of term to May 1, 1966, under Colorado Interstate's sale and exchange schedules X-12 and X-14, respectively, and under Natural's exchange rate schedule X-8, which are requested to become effective as of May 1, 1965.

---

[1] *Rate Schedule X-12.* Fourth Revised Sheet Nos. 37 and 39, Superseding Third Revised Sheet Nos. 37 and 39; Sixth Revised Sheet No. 38, Superseding Fifth Revised Sheet No. 38; Third Revised Sheet No. 39A, Superseding Second Revised Sheet No. 39A; and First Revised Sheet No. 39B, Superseding Original Sheet No. 39B; all of CIG's FPC Gas Tariff, 2nd Revised Volume No. 2.

Rate Schedule X-14. Second Revised Sheet No. 47, Superseding First Revised Sheet No. 47, and Fifth Revised Sheet No. 49, Superseding Fourth Revised Sheet No. 49 of CIG's FPC Gas Tariff, 2nd Revised Volume No. 2.

[2] *Rate Schedule X-8.* Third Revised Sheet No. 32. Fifth Revised Sheet Nos. 33 and 34 to Natural's FPC Gas Rate Tariff, Second Revised Volume No. 2.

Due notice of the subject applications to amend and opportunity for hearing has been given by publication in the Federal Register on April 13, 1965 (30 F.R. 4729) in Docket No. CP61-143; April 10, 1965 (30 F.R. 4702) in Docket No. CP61-149; and March 25, 1965 (30 F.R. 3890) in Docket No. CP61-163. No protest, petition to intervene, notice of intervention or request for hearing has been filed concerning this amendment.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require (1) that the Commission's order issued January 3, 1963 in Docket No. CP61-143, *et al.*, and amended December 30, 1963, and June 2, 1964, be further amended so as to (a) extend the short-term interruptible field sale and exchange of natural gas authorized therein to May 1, 1966, from the present expiration date of May 1, 1965, and (b) authorize an increase in the maximum daily quantity of natural gas exchanged from 25,000 Mcf daily to 35,000 Mcf daily, and (2) the filed revised tariff sheets reflecting an extension of term to May 1, 1966 under Colorado Interstate's sale and exchange schedules X-12 and X-14, respectively, and under Natural's exchange rate schedule X-8 be accepted for filing to become effective on the date this order issues.

The Commission orders:

(A) The Commission's order issued January 3, 1963 in Docket No. CP61-143, *et al.*, and amended December 30, 1963, and June 2, 1964, be and the same is hereby further amended so as to extend the short-term interruptible field sale and exchange of natural gas authorized thereby to May 1, 1966, from the present expiration date of May 1, 1965, and to authorize an increase in the maximum daily quantity of natural gas exchanged from 25,000 Mcf daily to 35,000 Mcf daily, as requested in the applications to amend filed herein.

(B) Colorado Interstate's Fourth Revised Sheet Nos. 37 and 39, Superseding Third Revised Sheet Nos. 37 and 39; Sixth Revised Sheet No. 38, Superseding Fifth Revised Sheet No. 38; Third Revised Sheet No. 39A, Superseding Second Revised Sheet No. 39A; and First Revised Sheet No. 39B, Superseding Original Sheet No. 39B; all of Colorado Interstate's FPC Gas Tariff, 2nd Revised Volume No. 2; Second Revised Sheet No. 47, Superseding First Revised Sheet No. 47, and Fifth Revised Sheet No. 49, Superseding Fourth Revised Sheet No. 49 of Colorado Interstate's FPC Gas Tariff, 2nd Revised Volume No. 2; and Natural's Third Revised Sheet No. 32, Fifth Revised Sheet Nos. 33 and 34 to Natural's FPC Gas Tariff, Second Revised Volume No. 2 be accepted for filing to become effective on the date this order issues.

(C) In all other respects said order, as amended, shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

EASTERN MAINE ELECTRIC COOPERATIVE, INC., DOCKET NO. E-6475

ORDER SUBSTITUTING HOLDER OF PRESIDENTIAL PERMIT

(Issued May 25, 1965)

The Eastern Maine Electric Cooperative, Inc. (Eastern Maine), incorporated under the laws of the State of Maine and doing business in the State of Maine with its principal place of business in Calais, Maine, filed an application on April 12, 1965 for the substitution of the holder of the Presidential Permit issued to the Kingman Electric Cooperative of Kingman, Maine on May 27, 1953. Eastern Maine states that it recently acquired the assets and liabilities of the Kingman Electric Cooperative (Kingman) which includes facilities for the transmission of electric energy from New Brunswick, Canada to Forest City, Maine which were originally owned and operated by Kingman and authorized pursuant to a Presidential Permit issued May 27, 1953, under Docket No. E-6475.

Eastern Maine further states that no change in the physical connection at the boundary or in the contracts involved with the transfer of power has been made as a result of this consolidation and change of ownership. It appears that Eastern Maine does not intend to export electric energy from the United States to Canada over the facilities in question. Eastern Maine in effect only seeks a substitution of the holder of the Presidential Permit.

The Commission finds:

Amendment of the Presidential Permit issued in Docket No. E-6475 to reflect the change of name of the Permittee, Kingman Electric Cooperative by reason of its acquisition by Eastern Maine Electric Cooperative, Inc. will not be inconsistent with the terms of the permit.

The Commission orders:

(1) The Presidential Permit signed by the President of the United States on May 27, 1953 in Docket No. E-6475 be amended to change the name of the Permittee from Kingman Electric Cooperative to Eastern Maine Electric Cooperative, Inc.

(2) The Presidential Permit, described above be further amended to incorporate the following Article:

Article 11. The Permittee shall report annually to the Commission on or before February 15, in triplicate, the amount of energy imported during each month of the preceding calendar year, the maximum rate of importation and the consideration therefor.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

LAKE SUPERIOR DISTRICT POWER COMPANY, PROJECT NO. 2390

ORDER ISSUING LICENSE (MAJOR)

(Issued May 25, 1965)

Application was filed on August 1, 1963 by Lake Superior District Power Company (Applicant) of Ashland, Wisconsin, for a license under Section 4(e) of the Federal Power Act (Act) for constructed major Project No. 2390, known as Big Falls Hydro Plant, located on the Flambeau River in Rusk County, Wisconsin, in the vicinity of the City of Ladysmith and the Village of Tony. No lands of the United States are affected by the project.

Construction of the project was completed in 1923 and there has been no substantial construction at the project since that date.

Applicant does not believe a license is required for its project. However, Applicant requests that if a license is issued, it should have a current effective date. In a proceeding on an application for license filed by Dairyland Power Cooperative for Project No. 1960 on the Flambeau River, the Commission, on November 17, 1949, found in its Findings and Order issuing a license for Project No. 1960, among other things, that the Flambeau and Chippewa Rivers, together with the Mississippi River were used for a number of years as a highway for the floating and rafting of quantities of logs and lumber in interstate commerce, and that the Flambeau River at least from a point above Project No. 1960, and the Chippewa River at least from its point of confluence with the Flambeau River, constitute navigable waters of the United States (8 FPC 1276, 1278). Project No. 1960 is located on the Flambeau River at river mile 25.5 and Project No. 2390 is located about 4½ miles upstream therefrom. After the log supply had been depleted on the lower tributaries of the Chippewa, logs were floated down the Flambeau and during the logging season from 4,000 to 5,000 men were employed on the North and South Forks of the Flambeau and on its tributaries, the Jump and Elk Rivers and their tributaries, in connection with running logs on those streams. The North and South Forks join to form the main Flambeau River at a point about 17 miles above Project No. 1960, some 13 miles upstream from Project No. 2390.

In accordance with the criteria set forth in our April 25, 1962 Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of April 1, 1962, and a termination date of December 31, 1993, since there has been no substantial construction of the project subsequent to its completion in 1923, and the reach of the Flambeau River in which Project No. 2390 is located has not heretofore been determined to be a navigable water of the United States.

The Secretary of the Army and the Chief of Engineers have reported that the plans of the project structures affecting navigation are satisfactory insofar as the interests of navigation are concerned.

The Department of the Interior, in reporting on the application, advised that the project, as currently operated, does not affect adversely the fish and wildlife resources, and that the provisions contained in Form L-3, which is attached hereto, are adequate.

The Department of Health, Education, and Welfare has advised that there are no apparent pollution or vector control problems created or intensified by the operation of the project, and no special conditions were recommended for inclusion in any license for the project.

The Public Service Commission of Wisconsin reported on the application but made no recommendation with respect thereto.

The Exhibit R, being one typewritten page, submitted as part of the application, shows existing outdoor recreation facilities but contains no plans for future recreational development for which there is a potential need. Applicant indicated willingness to continue to cooperate with Federal, State and local officials to provide for the maximum recreational use of the project site. By Article 32 herein we are requiring Applicant to continue cooperation in the interest of outdoor recreation and to file a revised Exhibit R for Commission approval within two years, showing a proposed plan for development to meet future recreational needs.

The Commission finds:

(1) The Flambeau River from its confluence with the Chippewa River to at least the North and South Forks of the Flambeau is a navigable water of the United States.

(2) Applicant is a corporation organized under the laws of the State of Wisconsin, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 10,400 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable.

(7) The exhibits designated and described in paragraph (B) below conform to the Commission's Rules and Regulations and should be approved as part of the license for the project.

(8) Exhibit R filed as part of the application conforms substantially to the Commission's Rules and Regulations and should be approved as part of the license for the project insofar as it indicates present recreational use.

The Commission orders:

(A) This license is hereby issued to Lake Superior District Power Company (Licensee) under Section 4(e) of the Federal Power Act (Act) for a period effective as of April 1, 1962 and terminating December 31, 1993, for the continued operation and maintenance of major Project No. 2390, located on the Flambeau River in Rusk County, Wisconsin, and affecting navigable waters of the United States, subject to the terms and conditions of the Act, which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Big Falls Hydro Plant Project No. 2390 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the licensee or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license and which are designated and described as follows:

***Exhibit J:* (FPC No. 2390-1) entitled "Big Falls Development—Flambeau River, Wisconsin-Lake Superior District Power Company, Ashland, Wis." signed for Lake Superior District Power Company by M. E. Juhl on July 30, 1963.**

***Exhibit J-1:* (FPC No. 2390-2) entitled "Big Falls Development—Flambeau River, Wisconsin-Lake Superior District Power Company, Ashland, Wis." signed for Lake Superior District Power Company by M. E. Juhl on July 30, 1963.**

***Exhibit K:* (FPC No. 2390-3) entitled "Big Falls Development—Flambeau River, Wisconsin-Lake Superior District Power Company, Ashland, Wis." signed by M. E. Juhl for Lake Superior District Power Company on July 30, 1963.**

(ii) project works consisting of: A dam 2,196 feet long consisting of earth embankments with reinforced concrete core walls resting on bed rock, and a reinforced concrete gravity spillway section having 8 floodgates, 14 feet high and 35 feet long; a reservior of about 380 acres extending 4.5 miles upstream from the dam; a powerhouse of brick construction 105 feet by 68 feet, containing 3 generating units totaling 7,780 kilowatts; and other appurtenant mechanical and electrical facilities; the location, nature and character of which are more

specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also formed a part of the application for license and which are designated and described as follows:

Exhibit L: General Design Drawing of Big Falls Development (FPC Nos. 2390-4 through -11), signed by M. E. Juhl, President of Lake Superior District Power Company on July 30, 1963.

Exhibit M: Two typewritten pages describing the mechanical, electrical and transmission equipment of the project, filed in the Commission August 1, 1963.

(iii) all of the structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-3 (Revised August 1, 1964) entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States" (32 FPC 1114), which terms and conditions, designated as Article 1 through 29, are attached hereto and made a part hereof, except Article 25 thereof, and subject to the following special conditions set forth herein as additional articles:

Article 30. The Licensee shall pay to the United States the following annual charge effective as of April 1, 1962:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. The authorized installed capacity for such purposes is 10,400 horsepower.

Article 31. The Commission reserves the right to determine at a later date what transmission facilities, if any, should be included in the license as part of the project works.

Article 32. Licensee shall cooperate with Federal, State and local agencies in the development and maintenance of such additional facilities as may be necessary for full recreational utilization by the public of project lands and waters consistent with the terms of the license and the operation of the project and shall within two years of the date of issuance of this license file for Commission approval a revised Exhibit R in conformance with the requirements of Section 4.41 R of Regulations under the Federal Power Act.

Article 33. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall, after notice and opportunity for hearing, permit such reasonable use of its reservoirs or other project works or parts thereof as may be ordered by the Commission in the interest of comprehensive development of the waterway or waterways involved and the conservation and utilization of water resources of the region for water supply for steam-electric, irrigation, industrial, municipal or similar purposes consistent with the primary objective of the project. The Licensee shall receive such reasonable compensation as may be appropriate for use of its reservoirs or other project works or parts thereof for such purposes, any such compensation to be fixed either by Commission approval of an agreement between the Licensee and the party or parties benefiting or by the Commission in the event the parties are unable to agree. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license.

(E) The Exhibit R referred to in finding (8) above is hereby approved as part of this license to the extent indicated in the finding.

(F) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP65-210

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 25, 1965)

On January 11, 1965, Northern Natural Gas Company (Applicant) filed in Docket No. CP65-210 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application.

Specifically, Applicant seeks authorization to construct and operate three farm taps and two measuring and regulating stations and appurtenances for the establishment of five new delivery points for the delivery of gas to two distributors, American Gas Company of Wisconsin (American) and Applicant's Peoples Natural Gas Division (Peoples) for resale. The delivery point locations will be as follows:

Distributor	*Location of Delivery Point*
American	Rusk County, Wisconsin
Peoples	Colfax County, Nebraska
Peoples	Black Hawk County, Iowa
Peoples	Gray County, Kansas
Peoples	Jasper County, Iowa

American and Peoples will reimburse Applicant for the entire cost of construction of the new facilities, which is estimated to be $5,003. Total estimated maximum firm and interruptible sales of natural gas are 59 Mcf and 158 Mcf per day, respectively.

Applicant's policy of requiring distribution customers to make a contribution toward the costs of measuring and regulating facilities and appurtenances where no additional contract demand gas is purchased is now incorporated in Applicant's tariff on file with the Commission.

Due notice of the filing of the application was published in the Federal Register on January 29, 1965 (30 F.R. 968). No petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 20, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation, having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G–280 (3 FPC 967).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, Northern Natural Gas Company, authorizing the construction and operation of facilities as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation and the transportation of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP65–221

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 25, 1965)

On January 21, 1965, Northern Natural Gas Company (Applicant), Omaha, Nebraska, filed in Docket No. CP65–221 a "budget-type" application, as supplemented on February 11, 1965, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during calendar year 1965 and the operation of natural gas facilities, all as more fully set forth in the application.

Applicant specifically seeks authorization to construct and operate gas sales facilities for the establishment of new and additional unspecified delivery points. Applicant estimates that 64 new delivery points will be constructed in 1965, of which 24, costing an estimated $60,000, will enable its Peoples Division to make direct sales in the field to irrigation and farm customers. Forty new delivery points, costing an estimated $240,000, will be installed for delivery of gas for resale to existing distributors in existing market areas. Financing of the total cost of $300,000 will be from cash on hand and from funds generated through operations.

Applicant also requests waiver of the provisions of Section 157.7(c)(1)(i) prohibiting the filing of an abbreviated application when a distributor is required to make a contribution to the Applicant for cost of construction of facilities. Applicant's policy of requiring distribution customers to make a contribution toward the costs of measuring and regulating facilities and appurtenances where no additional contract demand gas is purchased by the distributor is now incorporated in Applicant's tariff on file with the Commission.

Due notice appeared in the Federal Register on February 5, 1965 (30 F.R. 1269). No petition to intervene, notice of intervention or protest to the granting of the application was filed.

At a hearing held on May 20, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-280 (3 FPC 967).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) Good cause has been shown for waiver of that portion of Section 157.7(c)(1)(i) of the Commission's Regulations under the Natural Gas Act which

prohibits the filing of an abbreviated application where contribution toward the cost of the facilities is to be required of distributors.

(8) The authorization hereinafter granted should be limited to construction during the calendar year 1965, the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $300,000, with total deliveries to any one customer not to exceed a maximum of 100,000 Mcf of natural gas per year.

(9) The certificate issued hereinafter should be conditioned upon Applicant's compliance with the provisions of subparagraph (7) of Section 157.7(c) of the aforesaid Regulations.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Northern Natural Gas Company, to construct during the calendar year 1965 the proposed facilities hereinbefore described, as more fully described in the application, as supplemented.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(C) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1965, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $300,000, with the total deliveries to any one customer limited to a maximum of 100,000 Mcf of natural gas per year.

(D) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with subparagraph (8) of Section 157.7(c) of the Commission's Regulations under the Natural Gas Act.

(E) The certificate issued by paragraph (A) above is expressly conditioned upon Applicant's compliance with the provisions of subparagraph (7) of Section 157.7(c) of the aforesaid Regulations and, further, the certificate is granted upon the express condition that any interruptible service resulting herefrom shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

(F) This certificate shall not entitle any industrial customers to whom firm deliveries are authorized herein to any priorities or rights to additional gas for meeting any future increases in their requirements at the expense of resale customers desiring to acquire additional gas to meet any future increases in their requirements.

(G) Applicant's request for waiver of that portion of Section 157.7(c)(1)(i) of the aforesaid Regulations which prohibits the filing of an application where contribution to the cost of facilities is to be required from distributors, is hereby granted.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NATURAL GAS PIPELINE COMPANIES—BUDGET APPLICATIONS—DIRECT SALES, DOCKET NO. R-275

ORDER NO. 298

AMENDING REGULATIONS UNDER THE NATURAL GAS ACT

(Issued May 25, 1965)*

Section 157.7(c)(1)(ii) of the Regulations allows a pipeline company to request budget-type certificate authority to make direct sales of natural gas to consumers, located outside of local distributors' franchise areas, who will use the gas solely for certain specifically designated purposes. Recent applications under this section indicate that there are other purposes for which such relatively minor direct sales are made. There is no apparent reason why they, too, should not be permitted in a budget-type certificate, provided such sales are within the cost, time, volume, end-use and other limitations set out in the other portions of paragraph (c) of the section. We are, therefore, amending the rule to effect this change.

The Commission finds:

(1) The amendment adopted herein is necessary and appropriate for the purposes of the administration of the Natural Gas Act.

(2) Since this amendment imposes no new requirement on the persons affected thereby but, rather, relaxes existing requirements; and in view of the fact that the comments on the provision being amended herein (submitted by distributing companies during the proceeding in Docket No. R-254 which culminated in the rule now being amended) were not concerned with the purposes for which direct sales were made so long as their existing franchise was protected, it is unnecessary to comply with the notice, hearing and effective date requirements of section 4 of the Administrative Procedure Act.

The Commission, acting pursuant to the authority granted by the Natural Gas Act, as amended, particularly sections 7 and 16 thereof (52 Stat. 825, 830; 56 Stat. 83; 15 U.S.C. 717f, 717o) *orders:*

(A) Effective upon the issuance of this order, subdivision (ii) of § 157.7(c)(1) of Regulations Under the Natural Gas Act, Subchapter E. Chapter I of Title 18 of the Code of Federal Regulations, is amended to read as follows:

"§ 157.7 Abbreviated applications.

* * * * * * *

(c) *Gas-sales or transportation facilities—budget-type application.* * * *

(1) * * *

(ii) Direct sales of natural gas to consumers located in areas outside the franchise area of any local distributor."

[Secs. 7, 16, 52 Stat. 825, 830, 56 Stat. 83; 15 U.S.C. 717f, 717o.]

(B) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

---

*Published in the Federal Register on June 2, 1965 (30 F.R. 7280).

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

PACIFIC POWER & LIGHT COMPANY, PROJECT NO. 1447

ORDER ACCEPTING SURRENDER OF LICENSE

(Issued May 25, 1965)

Application was filed on December 22, 1964 and suplemented on March 11, 1965 by Pacific Power & Light Company (Applicant) under Section 6 of the Federal Power Act for surrender of its license for major Project No. 1447, known as the Cove Hydroelectric Project, located on Crooked River in Jefferson County, Oregon, and affecting lands of the United States.

The Cove project consisted of a low rock-fill diversion dam across Crooked River, an open conduit about 1,700 feet long extending from the dam to a reinforced concrete powerhouse containing two water wheels, one connected to a 700 kilowatt generator, the other connected to a 400 kilowatt generator, with appurtenant facilities, and a 22 kva transmission line 1.9 miles long. The energy was used by Applicant for public utility purposes.

The application for surrender was required to be filed by the provisions of Article 46 of the Commission's order issued September 12, 1960,[1] in connection with Portland General Electric Company's then proposed Round Butte Project No. 2030, which contemplated the flooding out by Project No. 2030 of Project No. 1447. Article 46 states that PGE, prior to starting construction of the Round Butte project, should enter into agreement with the Bureau of Reclamation, relating, among other things, to the settlement of rights and interests involved in the inundation of the Cove plant Project No. 1447 by the Round Butte Project. A copy of such an agreement was filed as Exhibit C of the application for surrender.

We are advised by Applicant in the aforementioned March 11, 1965 filing that the reservoir of the Round Butte Project had inundated the Cove Project reservoir and that the water level of the Round Butte reservoir was at such a height on January 31, 1964 that the Cove plant could not have been operated even if the equipment had not already been removed.

The Commission finds:

(1) Annual charges under the license for Project No. 1447 have been paid through December 31, 1963, and Applicant's copy of the license instrument was returned with the application for surrender.

(2) Public notice of the application has been given. No protests or petitions to intervene have been received.

(3) Acceptance of surrender of the license for Project No. 1447 is appropriate, as hereinafter provided.

The Commission orders:

Surrender of the license for Project No. 1447 is hereby accepted effective as of January 31, 1964, subject to the payment of annual charges through said date in the amount of $7.67.

---

[1] 24 FPC 408

OPINION NO. 460

SOUTHERN NATURAL GAS COMPANY v. UNITED GAS PIPE LINE COMPANY, DOCKET NO. RP63-7

OPINION AND ORDER ON COMPLAINT REQUESTING A REDUCTION IN MAXIMUM DAILY QUANTITY OF GAS TO BE TRANSPORTED

(Issued May 25, 1965)*

Syllabus

1. United's Rate Schedule No. T-3 does in fact provide for fixed billing demand of 55,460 Mcf per day for transportation service and charges therefor properly have been computed at that amount since January 3, 1953. PP. 1080-1081.
2. Commission *concludes* Southern has presented sufficient basis for reduction in billing demand to daily amount of 35,294 Mcf, commencing on date of issuance of this opinion and extending prospectively therefrom. P. 1081.
3. Under instant circumstances Commission *holds* Southern has clearly waived any contractual right it might have had to declare original conversion tariff voidable under *Mobile*. P. 1081.
4. At time Southern filed its complaint in February, 1963 conversion tariff constituted United's filed and lawful rate within meaning of *Montana-Dakota* and thus lawful rate for the service—under Section 5(a) of the Gas Act such rate is alterable prospectively only. P. 1081.
5. As long as Southern has had unconditional right to utilization of subject capacity in United's line, it should be required to pay therefor whether used to maximum during all billing periods or not. P. 1082.
6. Considering special circumstances here, continuation of charge based on fixed demand of 55,460 Mcf is not just and reasonable; such billing demand should be reduced to 35,294 Mcf per day. P. 1083.
7. In a proceeding arising under Section 5 of the Natural Gas Act, Commission *grants* complainant's request for reduction in maximum daily quantity of gas to be transported.

Commissioner Ross *dissenting*.

William S. Tarver, *Peter G. Smith* and *H. D. McHenry* for Southern Natural Gas Company

Thomas Fletcher for United Gas Pipe Line Company

Francis J. McShalley for the Staff of the Federal Power Commission

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

O'CONNOR, *Commissioner:*

This proceeding arose on a formal complaint filed with the Commission in February 1963 by Southern Natural Gas Company (Southern) against United Gas Pipe Line Company (United). The question for decision is whether, under a transportation service provided by United for Southern, the billing demand is flexible, depending on the maximum volume of gas tendered for transportation, or is a definite amount fixed by United's tariff. Southern contends that it has the contractual right to reduce the billing demand below the 55,460 Mcf[1] per day provided in the tariff and that United unlawfully denies it that right. Southern requests, *inter alia*, (1) that the Commission recognize such contract right to reduce the billing demand for gas transported by United; (2) that if the Commission finds that United's tariff worked an abrogation of the billing demand provision of the contract, it reduce the billing demand to a henceforth required amount of 35,294 Mcf per day, the maximum quantity Southern expects to tender in the future; and (3) that United be required to submit to Southern a service agreement providing for Southern's right to reduce the billing demand in the future as provided in the contract.

---

* Initial decision appears on P. 1085. See order issued July 20, 1965 denying rehearing, instituting new proceedings, etc., 34 FPC 88. Affirmed *Southern Natural Gas Co. v. F.P.C.*, 361 F. 2d 70 (CADC-1966).

[1] Unless otherwise noted all volumes are at 14.9 psia.

United, in its answer to the complaint, relies upon its currently effective Rate Schedule T–3 as contained in its FPC Gas Tariff, First Revised Volume No. 1, under which the service is performed, and filed pursuant to a settlement agreement to which Southern subscribed. This schedule provides for a fixed billing demand of 55,460 Mcf per day. United contends that the billing demand is fixed at the tariff amount, irrespective of the volumes of gas actually tendered by Southern for transportation; that, in executing the transportation contract, it intended to reserve, and has to the present reserved, 55,460 Mcf per day capacity in its Carthage-Sterlington line for use in the transportation of gas of Southern; and that, in any event, Southern, by its acquiescence to such a fixed bill over a period of years, is now estopped from complaining of its terms. The staff of the Commission supports the position of Southern.

The matter is now before us on exceptions filed by United to an initial decision issued November 30, 1964, by Presiding Examiner Ewing G. Simpson in which he held that United must revise its tariff, effective May 1, 1963, to provide a flexible billing demand in accordance with the terms of the transportation contract between the parties. As an alternative thereto, the Examiner would permit United to file a new service agreement giving Southern the right to reduce the maximum daily quantity for which charges are computed to the maximum quantity tendered for transportation on any day in the preceding twelve-month period ending with the last day of the billing month, accompanied by such other filing as required to effect a reduction in United obligation to receive gas for transportation to a maximum of 35,294 Mcf per day. Briefs in opposition to United's exceptions have been filed by Southern and the Staff.

The record shows that prior to 1945 United had an obligation to sell to Southern approximately 30 percent of the latter's line requirements, limited, however, to gas produced by United in the Monroe Field in northern Louisiana. This field was declining at that time to the point where United could not continue to meet the demands of its customers. To remedy this situation United, early in 1945, applied for a certificate in Docket No. G–622 to construct a 24-inch pipeline from the Carthage Field, Panola County, Texas to the Monroe Field for the purpose, among others, of transporting gas for Tennessee Gas and Transmission Company (now Tennessee Gas Transmission Company) and enabling United to transport its own purchased gas into the Monroe Field area for sale to its customers served therefrom, including Southern. The requested certificate was issued in July 1945. See *United Gas Pipe Line Co.*, Docket No. G–622, Opinion No. 124, 4 FPC 307.

At the same time that United's application was pending, Southern, having control through a subsidiary, Southern Production Company (Production), of reserves in the Carthage Field, applied to the War Production Board for an allocation and preference rating for the necessary pipe and material to construct its own transportation line, subject to the alternate utilization of a portion of the capacity of United's proposed line. At the suggestion of the Board, which had issued United an allocation, and having knowledge that United's line would have excess capacity, at least in its initial years of operation,[2] Southern withdrew its own application for a line to Carthage.

---

[2] 4 FPC at pp. 315–316.

On September 7, 1945, United entered into a contract with Southern (Rate Schedule No. 87) to supply 26 percent of Southern's requirements out of the Carthage Field in lieu of its former commitment from the Monroe Field. On the same day Production contracted to sell to United the gas produced by it in the Carthage Field with the intent, but without firm assurance, that the volumes thereof would be transported and sold to Southern at Monroe. The contract was subject to cancellation by Production on an option held by Southern to purchase Production's gas. By 1949 United's obligatory deliveries to Southern had grown to more than 115,000 Mcf, and Southern's need for additional gas was continually increasing. During 1950 United advised Southern that it had begun to experience shortages at Carthage and might not be able to continue the delivery of the present quantities, much less meet Southern's requests for increases. Seeking to assure a continued supply of Carthage Field gas to the greatest extent possible, Southern exercised its option to purchase Production's gas, thereby forcing the cancellation of the Production-United contract, and reducing United's ability to sell Carthage gas to Southern from 115,000 Mcf to 60,000 Mcf per day. Thereupon, on May 7, 1951, four interrelated and interdependent contracts were executed: (1) Southern entered into a contract for the purchase of Carthage gas from Production; (2) United and Production entered into a contract whereby United would gather and process the gas; (3) United and Southern entered into the transportation contract involved in this proceeding, providing for United's transportation from Carthage to Monroe of the residue gas purchased by Southern from Production; and (4) United and Southern contracted for a reduction in United's sales obligation to Southern (exclusive of the transportation gas) from 115,000 Mcf to 60,000 Mcf per day, thereby maintaining the necessary capacity in United's Carthage-Sterlington line for the continued transportation of the Production gas.

In the May 1951 transportation contract United agreed to receive from Southern at the Carthage delivery point for transportation "such quantities of natural gas as Southern may elect, from time to time, up to but not exceeding fifty-five thousand Mcf in any one day." The 55,000 Mcf was at the contract pressure base of 15.025 psia and was equivalent to the earlier figure of 55,460 Mcf at 14.9 psia. The contract provided (Article VIII) for a demand charge based on a billing demand defined as:

> * * * the maximum volume of gas which Southern has elected to deliver to United for transportation hereunder in any one day, up to and including fifty-five thousand (55,000) Mcf * * * during the twelve (12) month period ending with the last day of the billing month. * * *

Since the gas was now Southern's, the commodity charge previously applicable was eliminated. The originally proposed demand charge of 45 cents per Mcf was reduced by Commission order to 38 cents per Mcf.

On July 2, 1952, United filed the transportation contract as its Rate Schedule No. 126-B. The schedule became effective July 23, 1952, at which time the transportation of gas commenced thereunder. Southern's initial nomination was for 44,500 Mcf per day and billings were rendered at this figure for the next few months.

On July 3, 1952, one day after the filing of its transportation rate schedule, United filed at Docket No. G-2019 its conversion tariff pursuant to Order No. 144 restating its rates in tariff form and proposing a general rate increase. The tariff was suspended until January 3, 1953, at which time it went into effect subject to refund. In accordance with the then recent amendments to Section 154.85 of the Regulations Under the Natural Gas Act, United included with its filing a statement identifying those portions of the transportation contract stated to be continued in effect as an executed service agreement and not superseded by the gas tariff. The above-quoted portion of the contract, defining and specifying the billing demand, was not listed as being retained. Southern raised no issue at that time, nor did it do so until the present case, with respect to the changes in the rate schedule, nor did Southern assert that the provisions thereof were improper as contrary to the transportation contract. Commencing with the effectiveness of the tariff on January 3, 1953, United began to bill and Southern began to pay without protest a demand charge based on an amount of 55,460 Mcf per day, although it was not until January 25, 1956, 3 years later, that Southern first requested the transportation of the maximum figure. United's conversion tariff became part of a complex of consolidations under lead docket No. G–1142, eventually resulting in a settlement effective August 1, 1954, approved by the Commission in Opinion No. 277, 13 FPC 398, issued November 2, 1954.

Southern was a party by intervention to United's rate cases consolidated at Docket No. G–1142 which culminated in the acceptance of the revised conversion tariff. The tariff, and the underlying exhibits, listed Southern's maximum daily quantity for the transportation service at 55,460 Mcf. Except for a variation in the transportation rate, the rate schedule and the maximum daily quantity listed therein have remained unchanged to the present. In the settlement the parties expressly refrained from agreement on the rate-making principles underlying the rates reflected therein, and they specified that the settlement was to be without prejudice to the rights or contentions of any party in any future proceeding. The Commission's Opinion so provides.[3] Since that time United has filed nine rate increases to which Southern has been a party in the proceedings. Seven of the increases were settled out in March 1962, 27 FPC 504. The eighth and ninth increases were Docket Nos. RP63–1 and RP65–1, leading in the first instance to Opinion No. 428, 31 FPC 1180, and eventually to the settlement order issued December 23, 1964, 32 FPC 1515. On each occasion the settlement agreement provided that it constituted only a dollar settlement and that no methods underlying the determination of the dollar amounts were approved.

From January 25, 1956, and continuing through the winter of 1961–1962 Southern frequently requested and received the transportation of the maximum 55,460 Mcf per day. However, the Production[4] reserves have now been depleted to the point where they are physically unable to produce this amount of gas. Since April 18, 1962, Southern has requested the transportation of no more than 35,294 Mcf in any day and has asked that, under the terms of the billing demand provision in the transportation contract, the maximum daily quantity utilized in computing the charges be reduced to this figure. United has refused to comply on the ground that Southern must continue to pay a bill based on the 55,460 Mcf amount even though at no time can this quantity ever again be transported.

The issues in this proceeding, as enumerated in our February 27, 1964 order,[5] are stated in the initial decision. On our consideration of the record made, the briefs of the parties, and the exceptions to the Examiner's decision and the replies thereto, we conclude that United's Rate Schedule No. T–3, contained in the conversion tariff filed pursuant to our Order No. 144, as initially effective January 3, 1953, and as finally approved in the settlement effective August 1, 1954, thereafter included as a part of United's FPC Gas Tariff, First Revised Volume No. 1, does in fact provide for a fixed billing demand of 55,460 Mcf per day for the transportation service provided Southern and that the charges properly have been computed at that amount since January 3, 1953, to the present date. We further conclude that, based on the evidence adduced in this case and for the reasons hereinafter stated, Southern has presented a sufficient basis for a reduction in the billing demand to a daily amount of 35,294 Mcf, such reduction to commence on the date of issuance of this opinion and to extend prospectively therefrom. More particularly, we disagree with the Examiner in his determinations that no effect should be given to Southern's failure to lodge a timely complaint to the change from the contract billing demand in the conversion tariff submitted for filing and that Southern should be accorded retroactive relief.

---

[3] 13 FPC at pp. 419–420.

[4] The present seller is Sinclair Oil & Gas Company which has succeeded to the interests of Production under the contract and in the oil and gas leases subject thereto.

[5] 31 FPC 468.

It is possible that, had Southern made timely objection to the conversion tariff, the Rate Schedule T-3 would have been voidable under the rule enunciated by the Supreme Court in *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332 (1956), or, if not so voidable, the Commission would have ordered the tariff modified to provide for a flexible billing demand. Southern, however, not only did not protest the change the tariff made in its contract rights but operated without objection thereunder for a three-year period from January 3, 1953, to January 25, 1956, despite the fact that during this entire period it *never* requested transportation of the maximum quantity and instead, in a series of eleven separate transportation requests, specified amounts ranging from 45,377 Mcf to 9,832 Mcf per day. Under these circumstances we hold that Southern has clearly waived any contractual right it might have had to declare the original conversion tariff voidable under the *Mobile* case. It necessarily follows that, at the time of its complaint in February 1963, the provisions of the conversion tariff constituted United's filed rate within the meaning of *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246 (1951), and thus was the lawful rate for the service. Pursuant to our authority under Section 5(a) of the Natural Gas Act, this rate is alterable prospectively only.

The dissent suggests that the Supreme Court in the *Mobile* case, *supra*, and the District of Columbia Circuit in *Tyler Gas Service Co.* v. *Federal Power Commission*, 247 F. 2d 590, cert. den. 355 U.S. 895, have indicated that the underlying contract provisions cannot be waived by the acquiescence of one party to an inconsistent filing by the other. We think this misreads the two cases. As the Circuit Court made clear in the *Tyler* case, *supra*, at 593, the issue both there and in *Mobile* (see *Mobile Gas Service Corp.* v. *F.P.C.*, 215 F. 2d 883, 884) was whether, where a party to a gas sales contract had acquiesced in a conversion tariff which to a minor extent varied from the original contract, such acquiescence could be claimed to be a "basis for saying that it has agreed to be bound by later unilateral rate increases". Putting it in terms of this case, *Mobile* and *Tyler* stand for the proposition that Southern's acquiescence in United's action in filing the conversion tariff without the variable demand provisions could not constitute an implied agreement by Southern to waive its rights, should United initiate subsequent modifications of the underlying contract. The cases do not suggest that the purchaser cannot waive modifications of the underlying contract.

The dissent also states that to make out a case of implied waiver there must be a "clear, unequivocal and decisive act" showing such purpose. We do not disagree. But surely the fact that Southern, having been billed at its 44,500 Mcf nomination figure from July 23, 1952, when the original contract rate schedule became effective until January 3, 1953, when the conversion tariff became effective, then proceeded to pay without objection, protest, or reservation a demand charge based on an amount of 55,460 Mcf per day, though it did not request this maximum until more than three years later, constitutes such a showing. This is particularly true when it is recognized that the conversion tariff remained the subject of a formal Commission proceeding until November 2, 1954, and throughout this period Southern, though an intervener in the proceeding, never raised any question about the elimination of the variable billing provision, even though its elimination was then adversely affecting Southern.

Moreover, even if we had discretion to make a tariff change retroactive to the date of the complaint,[6] we would not do so in the light of the circumstances involved herein. There are at least two reasons for this conclusion. First, when United executed the transportation contract and received a certificate therefor, it dedicated 55,460 Mcf of the transmission capacity of the line to the performance of its obligation to Southern, regardless of amounts under the billing demand.[7] This capacity has been available at all times to Southern; no instances are recorded and none are alleged wherein United was unable to transport the quantities of gas requested by Southern up to 55,460 Mcf per day. As long as Southern has had an unconditional right to the utilization of this much capacity in United's line, it is our opinion that Southern should be required to pay therefor, whether used to the maximum during all billing periods or not.

Secondly, an examination of the exhibits leading to the settlement in United's recent rate cases Docket Nos. RP63–1 and RP65–1 reveals that, in each instance, the revenues contemplated under the transportation service were calculated at the fixed amount of 55,460 Mcf per day.[8] Thus, the costs-of-service developed and the rates fixed for the periods there involved were determined in part on this fixed amount. It is significant that although the present case was pending before us at the time of the successful negotiation of the settlement agreement,[9] Southern made no attempt to reserve the issue of a reduced billing demand in its agreement to the settlement terms. Instead, Southern agreed to the settlement as a complete dollar satisfaction of United's pending rate cases. There is no provision under the settlement whereby the Commission could now make adjustments to reflect the rendition of this transportation service at the lesser amount, with reduced revenues to United, and to adjust the rates of its other customers to compensate therefor. Southern's failure to lodge a more timely protest has thus resulted, over the years, in the perpetuation and formalization of a charge for the service at the maximum quantity which cannot now be adjusted for past periods without imposing an unwarranted hardship on United in the way of a reduction in revenues.

However, we do agree with the Examiner that Southern has demonstrated a reason for prospectively reducing the billing demand. Section 5(a) of the Act requires that when the Commission, after hearing, finds any charge to be unjust or unreasonable, it shall determine the just and reasonable charge "to be thereafter observed and in force, and shall fix the same by order." As earlier stated, the evidence shows that since April 1962 Southern has requested the transportation of no more than 35,294 Mcf per day. The evidence also establishes that the Carthage acreage reserves have been fully developed, that the production of gas will continue to decline steadily and that no daily quantity of gas larger than 35,294 Mcf can possibly be available to Southern for future transportation. Thus, as found by the Examiner, continued use of a fixed billing demand of 55,460 Mcf per day would require that Southern pay for a service which it does not now and cannot in the foreseeable future receive. Considering these special circumstances, we find that the continuation of a charge based on the fixed demand of 55,460 Mcf is not just and reasonable and that, as requested by Southern, the billing demand should be reduced to a henceforth specified amount of 35,294 Mcf per day, the maximum quantity Southern will be able to tender in the future.

---

[6] In its reply brief Southern disclaimed any desire to seek recovery of possible overpayments for the 1953–1956 period.

[7] Article I of the transportation contract, which was expressly listed by United in the statement required by Order No. 144 as one of the provisions remaining in effect and not superseded by the conversion tariff (unlike Article VIII which was not so listed), stated in pertinent part:

> Subject to the terms and conditions hereof, United agrees to accept and receive from Southern * * * for transportation as hereinafter provided, such quantities of natural gas as Southern may elect, from time to time up to but not exceeding fifty-five thousand (55,000) Mcf [15.025 psia] in any one day.

[8] Docket No. RP63–1, Exhibit No. 1–89; Docket No. RP65–1, Exhibit No. 7–3; Stipulation and Agreement dated December 16, 1964, approved December 23, 1964, FPC Gas Tariff, First Revised Volume No. 1, Fifth Revised Sheet No. 99. Although certain of these exhibits had not been formalized at the time the record was closed in this proceeding, they are matters of which we may take administrative notice herein.

[9] The Examiner's decision was issued November 30, 1964. The settlement agreement was concluded December 16, 1964, and approved by the Commission on December 23, 1964, the same date on which United's exceptions to the initial decision were filed. Under Section 1.30 of our Rules of Practice and Procedure the parties had until December 30, 1964, within which to file their exceptions and the Commission had an additional 10 days during which it could have initiated review on its own motion. Thus, at the time of the settlement the Examiner's decision had not become final.

The practical effect of our order is that Southern will be held liable to pay for the capacity held available to it in the past while United will be free for the future to employ for its own use the excess 20,166 Mcf per day of transmission capacity. This resolution is particularly appropriate, we believe, since United's decision to construct a line of the existing size has not been shown to have been significantly influenced by any overt act of Southern to secure an absolute reservation of a specific transmission capacity. While present events may indicate that the line is overbuilt to handle the quantities of gas currently moving through it, the fault, if any, does not lie with Southern. Rather, its present excessive size seems to have been due primarily to the wartime shortages of a variety of pipe sizes and materials which precluded the installation of pipe of a smaller diameter. In this respect we note that, had United's original investment in these facilities been shown to have been predicated, even in part, on an intent of a continuous, cooperative use thereof by Southern or the granting to it of an unconditional reservation of transmission capacity, our decision herein might be different. However, a review of the record underlying Docket No. G–622, particularly the allocation and preference rating granted United by the War Production Board, establishes that no conditions to this effect were attached either to the Commission's certificate or to the authorization as granted by the Board. Consequently, this circumstance is not before us for decision.

For the reasons herein given no change in the billing practice or charge for past periods will be ordered. For future periods the maximum daily quantity, and the concomitant payment obligation of Southern, will be reduced to 35,294 Mcf at 14.9 psia. If Southern, at a time or times subsequent hereto, desires to have this amount still further reduced, thereby releasing additional transmission capacity to United, it may make a further application to the Commission. United will be required to amend its Gas Tariff in accordance with this decision.

The Commission further finds:

(1) Southern and United are natural-gas companies under the Natural Gas Act, and the transportation in interstate commerce of natural gas involved in this proceeding is subject to the jurisdiction of the Commission.

(2) The continued billing by United, from and after the date of this decision, of a transportation charge under its Rate Schedule T–3 for the service provided Southern which is the subject of this proceeding based on a maximum daily quantity and a billing demand of 55,460 Mcf at 14.9 psia is not just and reasonable; a charge based on a maximum daily quantity and a billing demand of 35,294 Mcf at 14.9 psia would be just and reasonable.

(3) United should be required to file substitute tariff sheets subject to the approval of the Commission, containing the billing demand and maximum daily

quantity herein found to be proper as set forth in Paragraph (2) above, said substitute sheets to be effective on the date of our order herein and until further order of the Commission. The filing or filings herein required should be made within 30 days of the date of issuance of this decision.

(4) Except to the extent granted herein all exceptions filed to the Examiner's decision are without substantial support in fact or in law and should be denied.

The Commission orders:

(A) Within 30 days from the date of issuance of this order, and in manner and form satisfactory to the Commission, United shall file appropriate revisions to its FPC Gas Tariff, First Revised Volume No. 1, to provide with respect to its Rate Schedule No. T-3, Transportation Service for Southern Natural Gas Company, a billing demand based on a maximum daily quantity of 35,294 Mcf per day at 14.9 psia (35,000 Mcf at 15.025 psia), to be observed from and after the date of this order and until changed by further order of the Commission.

(B) The Examiner's decision, to the extent not inconsistent herewith and as modified herein, is hereby adopted as part of this decision and order.

(C) Except as herein granted, the exceptions to the Examiner's decision are hereby denied.

Commissioner Ross *dissenting.*

Ross, Commissioner, *dissenting:*

I dissent to that portion of the Commission opinion which holds that the filing of United's conversion tariff is voidable and that Southern waived its contract rights by not protesting the change which the tariff allegedly made in its contract.

The essential facts are as follows. In May 1951 Southern and United executed a transportation agreement which was filed with the Commission as Rate Schedule No. 126-B. This contract provided for variable billing demand and United billed Southern in accordance with this provision. Thereafter, United filed a conversion tariff pursuant to Order 144 which tariff however, eliminated the variable billing demand provision of the contract. The majority accepts this much as fact. However, the legal significance it attaches thereto is erroneous.

The *Mobile* Case[1] constitutes the leading case on this issue and involved another unilateral rate filing by United. The Supreme Court declared in that case:

> From our conclusion that the Natural Gas Act gives a natural gas company no power to change its contracts unilaterally, it follows that the new schedule filed by United was a *nullity* insofar as it purported to change the rate set by its contract with Mobile and that the contract rate remained the only lawful rate * * *. Any amounts paid by Mobile in excess of the contract rates on the basis of the erroneous order of the Commission were therefore unlawfully collected, and United is obligated to make restitution of the excess payments. (p. 347) [emphasis added]

This language makes it clear that unilateral rate filings unsupported by contract are void. There is absolutely nothing in the Court's opinion which as much as suggests that such filings are merely voidable contingent upon the prompt protest of the purchaser, as the majority holds. In this connection, the majority also finds that Southern has clearly waived any contractual right it might have had by its failure to protest promptly.

To make out a case of implied waiver there must be a clear, unequivocal and decisive act of the parties showing such purpose. Mere silence is no waiver unless there is an obligation to speak.[2] The facts here hardly satisfy these requirements. As a matter of fact the Tyler Case[3] emphasizes that a purchaser's acquiescence in a unilateral rate filing does not preclude subsequent and successful challenge.

---

[1] *United Gas Pipe Line Company* v. *Mobile Gas Service Corp.*, 350 U.S. 332.

[2] 56 Am Jur, Waiver, Section 17.

> The fact that the conversion tariff acquiesced in by Tyler Gas slightly changed the cost to it, as compared to the original contract percentage rate, cannot distinguish this case from Mobile * * *. (p. 593).

Finally the majority indicates that it would refuse to honor Southern's contract rights in any event because: (1) Southern should be required to pay for capacity dedicated to its use; and (2) Southern agreed to the settlement of recent rate cases involving United in which some exhibits had been prepared which computed revenues based on a fixed billing demand respecting the transportation involved in this case.

With respect to the first point, I simply remind my colleagues of the time honored maxim, "Equity follows the law". And the law is clear. While the Commission has the undoubted power to prescribe a change in contract rates whenever it determines such sales to be unlawful, this power is limited to making such changes on a prospective basis only.[4] Moreover, this power to alter contract rates does not permit the Commission to relieve a party of an improvident bargain. Rather, the sole concern of the Commission is whether the rate is so low as to adversely affect the public interest.[5] Here, the majority does not suggest that the public interest has been adversely affected by the variably billing demand provision of the instant contract.

Concerning the second point, the majority is using a party's assent to a dollar amount settlement of rate cases to foreclose its legal rights—this despite the express language of the settlement agreement whereunder the parties reserved all their rights in any and all future rate proceedings of United. In effect, the majority is holding that the standard reservation clauses in settlement agreements are meaningless and is forcing parties to pipeline rate cases[6] to immediately and fully litigate any and all claims they may have, or be deemed to have forever waived such rights. In so holding, the majority has unnecessarily undermined the prospects of settling future rate cases.

In summary, I agree with the position and supporting reasons advanced by the Commission Staff, Southern Natural and Presiding Examiner Ewing Simpson, and disagree with the majority's opinion.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON PROCEEDINGS INITIATED BY FORMAL COMPLAINT AS TO CHARGES SUBJECT TO SECTIONS 4 AND 5 OF THE NATURAL GAS ACT

(Issued November 30, 1964)

SIMPSON, *Presiding Examiner:* The proceeding arises under Section 4 and Section 5 of the Natural Gas Act (Act) and involves as the principal question, whether charges made by United Gas Pipe Line Company (United) to Southern Natural Gas Company (Southern) for a transportation service rendered under Rate Schedule T–3 of the former's tariff are lawful, just and reasonable.

Section 4(a) of the Act provides, in brief, that all charges made by a natural-gas company for the transportation of natural gas subject to the jurisdiction of the Commission, and all rules and regulations pertaining thereto, shall be just and reasonable; Section 4(b) provides, to the effect, that with respect to such transportation no natural-gas company shall make any undue preference or advantage or maintain any unreasonable difference in charges, service or facilities as between classes of service; Sections 4(c) and (d) provide, in substance, that every natural-gas company shall file schedules showing its rates and charges for transportation subject to the jurisdiction of the Commission, along with the classifications, practices, and regulations affecting the same, and the contracts relating thereto; and, Section 5(a) provides, similarly, that whenever after hearing the Commission finds a charge, rule, regulation, contract, or classification to be unjust, unreasonable, or unduly discriminatory, it shall determine and order the just and reasonable charge, rule, regulation, or contract to be thereafter in force.

---

[3] *Tyler Gas Service Company* v. *F.P.C.*, 247 F. 2d 590, cert. den. 355 U.S. 895.

[4] *F.P.C.* v. *Sierra Pacific Power Co.*, 350 U.S. 348.

[5] *Ibid.*

[6] Presumably the same could be said for producer and electric utility rate settlements.

On February 21, 1963, Southern filed its formal complaint asserting that with respect to United's jurisdictional transportation of natural gas from the Carthage field, Panola County, Texas, to Perryville, Louisiana, it is subjected to undue prejudice and disadvantage in that United's applicable rules, regulations, and charges are unjust and unreasonable, and in violation of Southern's contractual rights and the Act.

Southern requests, in effect, that with respect to its transportation contract with United, dated May 7, 1951, the Commission conclude that Art. VIII relating to a flexible billing imposes a continuing obligation in the premises, and was not abrogated by United's filing of a conversion tariff, or, if Commission's conclusion in these matters be adverse, that a reduction be directed in the maximum daily quantity required to discharge Southern under the contract; and that, in either event, United be required to submit a service agreement providing an automatic reduction in such maximum daily quantity to the maximum quantity tendered for transportation during the twelve-month period ended with the last day of the billing month.

On March 19, 1963, United filed answer asserting to the effect that: under the terms of the transportation contract United had in fact reserved in its Carthage-Sterlington line 55,460 Mcf of capacity for the sole use and benefit of Southern for a term of 20 years; setting of a fixed billing demand of 55,460 Mcf in United's conversion tariff was in accordance with the transportation contract; Southern by silence agreed to United's statement, filed pursuant to Section 154.85 of the Commission's Regulations, which specified or implied a reservation of 55,460 Mcf capacity for Southern's use; Southern, by participation in various past Commission proceedings concerned with United's tariffs and rates, accepted the terms of various approved settlements which recognized the reservation, and for a period of 10 years also acquiesced in United's method of application of its tariff to the transportation service; and, finally, Southern's avoidance of payment for reserved space would discriminate against United's other customers by increasing their allocated cost of service.

United therefore requests, in effect, that the Commission reject Southern's interpretation of the tariff or find that Southern has, expressly and by conduct, acquiesced and agreed to the terms thereof, and is estopped to assert any meaning contrary thereto; or else determine the responsibility of United's customers for the cost of service related to the facilities involved and, for the purpose thereof, join as parties hereto all of United's customers so concerned.

Except as appears in the preceding paragraph, no hearing has been requested upon the complaint and answer.

On February 27, 1964, the Commission issued its order entitled "Order Instituting Proceedings, Designating Presiding Examiner, and Fixing Date for Prehearing Conference," wherein it was concluded that Southern's complaint raised issues other than those specifically stated which could not be decided upon the pleadings,[1] and that the issues involved related primarily to matters of law or regulatory policy with few, if any, disputed questions of fact. Accordingly, the order provided for a prehearing conference to be held at a time, date and place therein fixed, to afford the parties an opportunity to stipulate relevant facts and to permit the fixing of dates for the submission of briefs on the issues presented, or, at the Presiding Examiner's discretion, the setting of a date of hearing upon such relevant and material matters as remained in dispute. Notice having been duly issued and published, and the parties having filed and served, as later directed, their several proposals to stipulate, the prehearing conference provided by the Commission's order, aforesaid, was held of record commencing on March 24, 1964, and concluding on April 23, 1964, after a recess from March 25, 1964 to April 22, 1964, granted on request of counsel to enable revision of the several stipulations proposed and consideration of the necessity of tenders of supplementary offers of evidence.[2]

Proposed stipulations were severally presented in the final session of the conference, on behalf of Southern, United, and Commission's Staff. Upon due agreement thereto these were accepted and formerly received by the Presiding Examiner as part of the prehearing conference record as Exhibits 1, 2 and 3, respectively.

With respect to certain matters upon which the parties were unable to agree, and requested a ruling, the Presiding Examiner, orally of record: excluded as foreign to the issues, Southern's offer in evidence by reference of the transportation agreement between Tennessee Gas Transmission Company and United, dated March 15, 1945;[3] and received in evidence by reference: (a) over the objection of United,[4] Southern's offer of the contract between Southern Production Company (Production) and Southern, dated May 7, 1951, providing for Southern's purchase of Carthage field gas (Item A); (b) over the objection of Southern,[5] United's offer of documents described in subparagraphs (h), (i) and (j) of paragraph 4 of its proposed stipulation, relating to the 1945 testimony of United's witness Hargrove in Docket No. G-622 (Item B); and, (c) over the objection of United,[6] Southern's offer of matter contained in Exhibits N, O, P and Q, of its proposed stipulation relating to the 1951 testimony of Southern's witness Van den Berg in Docket Nos. G-1308 and G-1676 (Item C).

Prior to conclusion of the conference each counsel stated, formally of record, a waiver of further hearing and rested upon the respective stipulations and the aforesaid rulings upon the respective offers of evidence.

---

[1] Particularly the issue whether the fixed billing demand claimed by United is just and reasonable.

[2] The order made provision for intervention but as no petitions or notices in this respect were filed, only complainant, the respondent, and Staff participated.

[3] Exhibit 28 in Docket No. G-622. Contrary to the provision in Southern's contract the billing demand provision of this, approximately contemporaneous, contract provided for a fixed payment regardless of the amount of gas transported, a fact which Southern unsuccessfully contended evidenced the intent of United as to the billing demand provision of the contract between it and United.

[4] That United was a stranger to the contract. However, the existence of the Southern-Production contract is specifically recognized in the recital clauses of United's transportation contract with Southern.

[5] That Southern was not a party to the proceeding. However, at the request of the Commission, Southern's President voluntarily testified therein, with counsel present, as to sufficiently related matters including Southern's plans for Carthage gas and its system requirements.

[6] That United was not a party to the original proceeding. However, the prior testimony here involved, descriptive of the arrangement between United and Southern for the transportation of gas by United from the Carthage field to Perryville, had been received in evidence by reference as a part of Item M in United's Docket No. G-1750, *et al.* United later emphasized an objection only that the matter was self-serving.

Thereafter, and as duly provided therefore during the conference, seriatim briefs were filed by Southern, United, and Staff Counsel, respectively, including Southern's reply.[7]

THE ISSUES

The Commission's order instituted the proceeding upon the following statement of issues:

1. Whether the transportation contract between United and Southern provided a billing demand which was subject to change, depending upon the amounts of gas Southern elected to deliver to United up to 55,460 Mcf per day or provided a fixed billing demand of 55,460 Mcf;

2. If it is determined that the contract provided a billing demand subject to change:

a. Whether United, in its conversion tariff, made a substantive change in the contract by providing a fixed billing demand and whether such a substantive change is within the intent and purpose of Section 154.85 of the Commission's Regulations under the Act, and

b. Whether the tariff filed pursuant to the settlement in G-1142 (13 FPC 398) changed the contract provision as to billing demand.

3. Whether under the *Mobile*[8] doctrine United is free to seek a unilateral change in the transportation contract.

4. Whether Southern, by its past acquiescence and conduct with regard to the billing demand provision contained in United's Rate Schedule T-3 is now estopped from complaining of that provision.

5. If United's presently effective Rate Schedule T-3 specifies a fixed billing demand, whether that tariff provision is just and reasonable under the Act.

THE CONTENTIONS

Complainant

Southern submits that: The transportation contract provided a billing demand subject to change depending upon the amounts of gas Southern elected to deliver for transportation (up to a maximum quantity of 55,460 Mcf) on any day during the preceding twelve months; neither United's conversion tariff, nor the revised tariff filed pursuant to the settlement in Docket No. G-1142, *et al.*, lawfully effected a substantive change as to billing demand, and Section 154.85 of the Commission's Regulations did not operate in conjunction with either so to do; United was not free under the doctrine of the *Mobile* case[9] to effect a unilateral change in the transportation contract; Southern is not estopped from complaining of the billing demand provision contained in United's Rate Schedule T-3; and, assuming *arguendo*, that none of the foregoing be true, a provision in the rate schedule specifying a fixed billing demand, regardless of the volumes available for transportation, is unjust and unreasonable under the Act and should be set aside.

Respondent

United asserts, in substance, that Southern contracted on the basis of a fixed billing demand as evidenced by testimony in proceedings in Docket No. G-622 relating to the control of space in United's pipeline and an attempt to prove in United's Docket No. G–1860, *et al.*, a life of Carthage field reserves of 22-plus years; concedes the mere filing of the conversion tariff under Section 154.85 of the Regulations did not make a substantive change in the contract, but asserts that such filing put Southern on notice of United's omission of Art. VIII of the transportation contract from the tariff and of an intent that the tariff would control and Southern be obligated to pay for capacity, whether used or not; Southern was required to object or agree and, failing to do so, thereafter evidenced its agreement thereto by performing obligations as fixed in the tariff even though during the period ended January 25, 1956, it neither requested nor received as much as 55,460 Mcf of gas per day; Southern further consented by a "consensual" participation in the rate settlement in Docket No. G–1142, *et al.*,[10] which, being predicated upon advantages to Southern and detriment to United, estops Southern to deny the binding conclusiveness of the agreement; such reservations as claimed by Southern in connection with this settlement (G–1142) relate only to methods and principles used in arriving at the settlement and not to the agreement as one which relates to billing provisions; the *Mobile* case is not applicable as the case does not prohibit a consent; and, as the record will not support a finding that the aforesaid tariff provision is contrary to the public interest, the Section 5(a) investigation should be dismissed.

---

[7] While United's Counsel excepted to the briefing schedule as providing him insufficient time, as well as the Presiding Examiner's denial of a motion for modification thereof, it is to be noted that United's brief was not required for some 7½ weeks after the conclusion of the conference. Counsel also excepted to the fact that his motion to change the schedule to provide him opportunity to reply to Staff's brief, as an initial brief, under the Section 5 part of this proceeding, was also denied. The denial was based upon various matters stated in Southern's objections thereto.

[8] *United Gas Pipe Line Company* v. *Mobile Gas Service Corporation*, 350 U.S. 332 (1956).

[9] *United Gas Pipe Line Company* v. *Mobile Gas Service Corporation*, 350 U.S. 332 (1956).

Commission's Staff

Staff contends that the language of Art. VIII of United's transportation contract with Southern, whether given its plain meaning or a construction based upon United's initial billing practices and consideration of Southern's related Carthage gas purchase contract, establishes the billing demand as one subject to change, depending upon the amount Southern tenders for transportation up to and including 55,460 Mcf (14.9 psia); the change proposed by United, consisting of the omission of Art. VIII of the transportation contract from its conversion tariff and the statement filed under Section 154.85 of the Regulations, provide a substantive change as to billing demand, contrary to the purpose and intent of Section 154.85; and, accordingly, the tariff filed pursuant to the settlement agreement in Docket No. G–1142 could not and did not lawfully affect such a change; United is not free under the *Mobile* doctrine to seek a unilateral change in the transportation contract[11] as the doctrine holds to the effect that United does not have the right, with or without the Act, to unilaterally change its contract by providing for a fixed billing demand in its conversion tariff; Southern never agreed to any change in the billing demand provision, reserved its rights in the rate settlement agreements in which it participated, had no reason to protest an initial billing based on 55,460 Mcf of demand[12] or to believe, until United denied its request for a reduction, that United had intended to establish a fixed billing demand by the filing of its conversion tariff, and, accordingly, is not now estopped to complain of the billing demand provision of United's Rate Schedule T-3.

THE EVIDENCE

Jurisdiction

Jurisdiction over the transportation service, having been asserted by the Commission in prior proceedings, is not contested as an issue in this proceeding.

---

[10] The *Mobile* case, *supra*, arose when Mobile Gas Service Corporation refused to accept a rate increase United attempted to impose by a similar unilateral action.

[11] *United Gas Pipe Line Company* v. *Mobile Gas Service Corporation*, 350 U.S. 332 (1956).

[12] Staff asserts that Southern had no reason to challenge United's filing in this regard since it was then (1952–1956) able to, and subsequently (1956–1960) did, receive 55,460 Mcf, the maximum provided in the contract.

The 1951 Contract Billing Demand Provision

The transportation contract of May 7, 1951 (Rate Schedule No. 126–B),[13] provided that United would accept from Southern at Carthage (Texas) such quantities of natural gas as Southern should elect for transportation to Monroe (Louisiana), up to but not exceeding 55,000 Mcf in any one day (Paras. I and III),[14] at a charge of 38 cents per Mcf of billing demand per month consisting of the maximum volume of gas which Southern elected to deliver to United in any one day during the 12 months period ending with the last day of the billing month, within the above limit provided (Art. VIII).[15]

Previously, the predecessor contract of September 7, 1945, (United's Rate Schedule No. 87) provided that each year (ending October 31) Southern would purchase United's contract percentage (26%) of the former's aggregate line requirements, for which it would pay a demand charge of 38 cents per Mcf of maximum daily delivery during the 12 months period, and a commodity charge of 5 cents per Mcf.[16]

The record does not disclose the billing practiced under Rate Schedule No. 87, but it does disclose that with respect to Rate Schedule No. 126–B, and effective with the date of initial operation (July 23, 1952) Southern requested the transportation of 44,500 Mcf per day until further notice and that until January 3, 1953, when United's FPC Gas Tariff, Original Volume No. 1 became effective, billing was rendered on the basis of a demand equal to Southern's continuing request, and that only after the latter date was it billed on the basis of 55,460 Mcf, without regard to the billing terms of the contract.

Except for United's contentions related to incidents and events attending the execution of the predecessor (1945) and later (1951) contracts, *supra*, and an alleged course of conduct between the parties as to an implied reservation of space, it is obvious from the very language of the 1951 contract that Southern was to be billed based upon a demand which was subject to change, depending upon the amounts of gas Southern would elect to deliver, and not upon a fixed billing demand of 55,460 Mcf per day.

United's Claim of Reservation of Space

United would seek to vary the direct language of the contracts and lay a preliminary foundation for an ultimate claim of estoppel by contending to the effect that from the very beginning of negotiations preceding the contract of September 7, 1945, Southern had the ultimate intent to obtain possession of Production's gas for transportation by United under an exclusive and preemptive reservation of space in the latter's Carthage line. Matters claimed by United to evidence such an intent include Southern's acquisition in 1947 and exercise in 1952 of the option to take Production's gas with the concomitant loss to United of the use of an equivalent amount of capacity in its Carthage line; testimony of Southern's witnesses in Docket Nos. G–622 and G–1750, *et al.*, stating an estimated life of Production's reserve on an assumption of production of 55,460 Mcf for every day of such life; and repeated consideration by Southern of constructing and operating a similar line for such transportation.

The consideration of the evidence which follows leads to conclusions which compel a denial of this contention.

---

[13] Having a term of 20 years from its effective date to July 23, 1972.

[14] Measured at 15.025 psia.

[15] Converted for billing to a pressure base of 14.9 psia; *i.e.*, 55,460 Mcf.

[16] Measurement at 14.9 psia; provision also being made for subsequent tax reimbursement, and a term ending October 31, 1965.

The 1945 and 1951 Contracts

The immediate controversy between the parties developed, in part, out of circumstances dating back to 1945 when Southern contracted with United to obtain a supply of gas to replace the latter's declining production from the Monroe (Louisiana) field, and, at the same time, to gain access to production from acreage owned and controlled by its subsidiary, Southern Production Company, Inc., (Production), in the Carthage gas field.

United, a substantial supplier of gas from the Monroe field area, had, previous to 1945, contracted to sell and deliver to Southern, from the field, sufficient gas to supply 30.375 percent of the latter's line requirements. However, the decline in production made it apparent that it could not continue to meet demands upon its Monroe supplies, and United, accordingly, filed an application in Docket No. G–622 [17] for a certificate authorizing it to transport into the Monroe area gas available from the Carthage (Texas) field sufficient to provide for the immediate sale and delivery of 61,000 Mcf per day of such gas to Monroe area customers, including three pipelines.[18]

At the same time, Southern, having control, through its subsidiary, Production, of approximately 500,000,000 Mcf of reserves in the Carthage field,[19] considered extending its Logansport line to Carthage and, in March 1945, filed with the War Production Board for an allocation and necessity rating with respect to the requisite pipe and material,[20] subject, however, to the results of negotiations then pending with United for alternate utilization of a portion of the capacity of the latter's then proposed Carthage-Monroe pipeline (G–622).

On March 16, 1945, at some suggestion of the War Production Board, and prior to successful conclusion of its negotiations with United, but with reasonable knowledge that United's line would be built with surplus capacity, Southern, again subject to the same previous condition, withdrew that part of its application which related to its proposed Carthage extension.

United, however, with a previously issued War Production Board preference rating and allocation, had its pipe on firm order by April 1945, and, on July 5, 1945, obtained the certificate applied for in Docket No. G–622, *supra*.[21]

As a consequence of discussions conducted during this general period, United thereafter formally agreed by contract dated September 7, 1945, to substitute for the commitment to supply Southern 30.375 percent of line requirements from Monroe field sources, a commitment to supply 26 percent of such requirements from Carthage sources (United's FPC Gas Rate Schedule No. 87).[22]

United, however, had already fixed the design of its Carthage line, largely on the basis of availability of pipe size [23] along with a consideration of shortages anticipated in Monroe area supplies, to present and expected future demands of its local Monroe area and pipeline customers, and the requirements of a transportation obligation to Tennessee.[24] It confined its consideration as to Southern's requirements to the trend of the latter's prior load development as limited by the capacity of its then existing lines.

---

[17] Sometime prior to April 1945.

[18] Southern Natural Gas Company, Mississippi River Fuel Corporation, and Memphis Natural Gas Company.

[19] Production had four completed and shut-in wells in the field, and one drilling.

[20] Involving 25 miles of 14-inch line to connect the Carthage and Logansport fields, 62 miles of 14-inch loop line paralleling its existing Logansport line, and various field gathering lines, estimated to cost, in total, $1,700,000.

[21] *United Gas Pipe Line Company,* 4 FPC 307, 320.

[22] Effective November 1, 1945. In 1945, Southern had obtained 75 percent of its 1944 peak day requirements of 240,000 Mcf from Monroe field producers and 25 percent from production and purchases in the Logansport field. United's commitment with respect to supplies from the Monroe field then amounted to some 72,900 Mcf per day (peak) or 21,000 000 Mcf per year. Under the new contract sale of gas was effected at Carthage at a price of 5 cents per Mcf, and delivery at Monroe at an added charge of 1.8 cents per Mcf.

[23] *I.e.,* diameter of 24 inches.

On the same date as the Southern contract (September 7, 1945), Southern's subsidiary, Production, contracted to sell to United the gas to be produced from 16 drilling units in the Carthage field,[25] in effect for transportation and sale by the latter to Southern at Monroe. However, in order that the parent, Southern, might obtain this same gas in the future, a provision was included in the contract for Production's optional cancellation thereof before the expiration of the 10-year primary term, but after January 1, 1950; and, on June 16, 1947, prior to a distribution of its subsidiary's stock, Southern obtained the option to take Production's gas at any time on or after January 1, 1950, and prior to December 31, 1952.[26]

Increases in Southern's loads and system capacity culminated December 15, 1948, in a line requirement of approximately 445,000 Mcf per day, and the concurrent obligation on the part of United to deliver, under its 26 percent commitment, up to 115,700 Mcf per day.

However, in anticipation of Carthage field shortages, in relation to which it now desired to gain direct access to Production's gas, Southern filed an application as amended in Docket No. G–1308 (1949–1950) for a certificate to authorize the construction and operation of pipeline facilities to loop, extend, and connect its existing Logansport-Monroe line with the Carthage field.[27] During the course of these proceedings, United advised Southern of certain limited intentions as to its meeting the latter's future requirements and, in August 1950, further advised of its inability to supply the additional gas required to meet the 26 percent of an increase to 550,000 Mcf in such requirements, of which Southern had given timely notice.

Thus concerned that its contract with United (Rate Schedule No. 87) did not provide either a right to a specific quantity of gas or adequate relative rights, in the premises,[28] and that the continuance of deliveries of 115,700 Mcf per day could not be assured,[29] Southern sought to have determined the volume of Carthage gas to which it was entitled, and United agreed that based upon the ratio of Southern's existing entitlement to the total of United's field commitments,[30] Southern would be entitled for the future to 28 percent of United's

---

[24] The line would begin at a field gasoline plant near Carthage, Texas, extend 132 miles eastwardly to a point of connection with Tennessee's existing main line at Monroe, Louisiana, and, thence, 10 miles northeastwardly to United's Sterlington, Louisiana, compressor station in the Monroe field. The estimated cost, including various appurtenant facilities, but not gathering facilities and processing plant, amounted to approximately $6,964,000.

[25] At a price of 4 cents per Mcf, plus payment for extracted liquids.

[26] At a price of 5 cents per Mcf for gas purchased to December 31, 1952, and thereafter each 5 years at a price determined by arbitration.

[27] *Southern Natural Gas Company*, 9 FPC 756. Including 5.8 miles of 8-inch and 29 miles of 12-inch line from Carthage to Logansport, 78 miles of 14-inch loop pipeline, and certain compressor station facilities, estimated to cost nearly $4,000,000. The certificate was issued May 19, 1950. See, *Southern Natural Gas Company*, 11 FPC 1262, 1263–64 for further details as to facilities costing $3,767,220 and directly related to the proposed purchase of Production's gas.

[28] Southern may have had equal rights with Mississippi River Fuel and prior rights as to others.

[29] United indicated during the 1950–1951 negotiations as to this and related matters that it had shortages at Carthage and would not be able to continue the delivery of 115,700 Mcf per day.

[30] Including commitments of 160,000 Mcf per day to Mississippi River Fuel, 120,000 Mcf per day to Texas Eastern, and 25,000 Mcf per day to local markets, which, with the 115,700 Mcf per day to Southern, totaled to 420,700 Mcf per day.

Carthage purchases, or 22,000,000 Mcf per year.[31] As this agreement assumed a continuation of United's 4-cent per Mcf Carthage field contracts, then due to expire on various dates commencing May 17, 1956,[32] to enable United to offer adequate inducement for the extension of such contracts for terms sufficient to cover the remaining term of Southern's contract,[33] the latter agreed to an increase in United's commodity price of gas to the approximate going field price of 8.5 cents per Mcf.[34]

Southern's method of assuring its supply of Carthage gas thus involved abandonment of construction of certain facilities proposed in Docket No. G–1308,[35] exercise of its option to purchase Production's Carthage gas,[36] and, contemporaneously: cancellation of Production's gas sale contract with United; execution of a gathering and processing contract by and between Production and United; a superseding of United's sales contract of September 7, 1945, to provide a reduction in United's sales obligation to Southern; and, agreement by United to transport to Monroe, for Southern, gas to be purchased from Production, up to 55,000 Mcf of gas per day.

Thereafter, on July 18, 1951, United filed its application in G–1750 for Commission certification of the proposed transportation service,[37] and on November 26, 1951, tendered for filing the sales contract of May 7, 1951 (Rate Schedule No. 112–A) to supersede Rate Schedule No. 87 and reduce sales for the terms remaining, to October 31, 1965, from 115,000 Mcf to 60,000 Mcf per day, or by the amount of the volume lost to it by Production's cancellation;[38] and, again, on February 1,

---

[31] Of an anticipated total annual Carthage production of 78,000,000 Mcf, which did not include Production's supply. Southern had been receiving from United approximately 42,000,000 Mcf per year and expected to receive from Production approximately 20,000,000 Mcf, or, from both United and Production, quantities equal to that previously received from United alone.

[32] Skelly Oil Company contract, the second largest in terms of volume available.

[33] *I.e.*, to October 31, 1965. The suppliers involved were Arkansas Louisiana Gas Company, British-American Oil Producing Company, Magnolia Petroleum Company, McAlester Fuel Company, Phillips Petroleum Company, Skelly Oil Company, and Union Producing Company an affiliate, to each of which United had been paying 4 cents per Mcf under contracts which would have expired as indicated in the text, except that one was terminable in part at any time. United subsequently extended its Carthage purchase contracts to 1972 at a price of 8.5 cents effective January 1, 1952.

[34] United's price to Southern under its Rate Schedule No. 87 was at a 4-cent per Mcf commodity rate, a 1-cent per Mcf gathering charge, and a demand charge of 38 cents per month per Mcf of the maximum quantity delivered during the previous 12 months which averaged an additional 1.8 cents per Mcf. The agreement to accept an increase in United's commodity rate was not formally expressed in the new sales contract of May 7, 1951, but Southern admits by testimony of its witness in the proceeding in Docket No. G–1750, *et al.*, that such was implied therein (Art. I, Sec. 2).

[35] *Southern Natural Gas Company*, 11 FPC at 1263. The construction here eliminated had been estimated to cost $3,767,320.

[36] Under its new purchase agreement of May 7, 1951, with Production, which was no longer a subsidiary, the wellhead price became 7 cents per Mcf for all gas taken prior to January 1, 1952, and 8½ cents per Mcf for the next 5 years, with increases of approximately 1-cent per Mcf for each following 5-year period of the life of the field; plus a gathering charge to 1-cent per Mcf.

[37] *United Gas Pipe Line Company*, 11 FPC 1016.

[38] The new sales contract, providing an increase in rate, was suspended by the Commission in Docket No. G–1860 (11 FPC at 1017). It was refiled, as required by Commission's order issued June 13, 1952 (11 FPC 1016), to reduce the demand charge from 45 cents to 38 cents per Mcf (Rate Schedule No. 126–A). The excise of Southern's option to purchase Production's gas and Production's notice of cancellation of its contract to sell to United were also to become effective contemporaneously with the effective date of the new transportation contract.

1962, refiled the transportation contract dated May 7, 1951 (Rate Schedule No. 112-B).[39]

Conclusions as to an Implied Reservation of Space

As early as 1945, Southern expressed an interest in the so-called utilization of a part of the capacity of United's proposed Carthage pipeline. Its president so stated, in effect, in testimony in the proceedings in Docket No. G-622;[40] its chief engineer, by letter dated March 3, 1945, wrote in similar vein to the War Production (Board);[41] and it is stated in such terms in Southern's application to the Board of approximately even date.[42] However, it also appears that, in fact, all of the foregoing negotiations between these parties were directed in each instance toward arrival at an agreement which would provide for the simple transportation of an adequate volume of Carthage produced gas at a mutually satisfactory price.[43] Further, in the proceedings in G-622 (1945) neither party nor witness, nor participating counsel, mentioned a subject which so much as suggests "control", "mortgage", "rent", or "reservation" of line space or capacity beyond the evident assumption that United would be able to perform according to the intent of its negotiations. Indeed, in that part of the then current negotiations between Southern and United which bore on the subject of passing of title, the method proposed by Southern appear to have evoked no discussion which supports United's claim,[44] and original arrangements concerning the sale of Production's gas to United for delivery at Monroe, which apparently placed the transportation responsibility wholly upon United, gave no indication, either direct or otherwise, that Southern desired any assurance of performance in the nature of a specified right to space. Indeed, the fact that, even allowing for the volume of option gas, United's line would have a surplus of capacity,[45] serves to negate the necessity of any assumption looking toward such a reservation.[46]

Further, while the exercise of Southern's option on Production's reserves was induced, in part, by anticipation of a reduction in United's Carthage deliveries,[47] it initiated its application in Docket No. G-1308 (1950) for the purpose of attaching these reserves on an assumption that United, having progressively over a period of years met its share of Southern's increasing line requirements,[48] would continue to deliver 115,000 Mcf per day, if necessary by means of an election to do so from other sources. However, Southern was informed for the first time during the course of the proceedings in Docket No. G–1308 that United's deliverability from Carthage had declined by as much as 34 percent of the volume assumed and that United would not meet the deficiency from other sources. Accordingly, in the light of these circumstances, it must be held that testimony of Southern's witness in G–1750, *et al.*, that it was desirable that Southern provide capacity in United's lines", and "advantageous to leave a hole in the pipe line of 55 million feet" had no relation to any plan which had its inception in prior events but related only to the fact that Southern realized, during negotiations with United in 1950–1951, it had available the possibility of an economical alternative to its own construction.[49]

---

[39] The transportation contract was suspended by the Commission's order of February 28, 1952, in Docket No. G-1873. It was refiled, as required by Commission's order of June 3, 1952 (11 FPC 1016), to reduce the rate from 45 cents to 38 cents per Mcf (Rate Schedule No. 126-B).

[40] Such as: "looking towards the utilization of capacity in the pipeline which they propose to build", and "we would require substantial capacity in this line" (United's Stipulation's, Exh. 1); again: "if we get—the capacity we need in the United Gas Pipe Line Company's line" (United's Stipulation's Exh. 6).

[41] As to "negotiations with United Gas Pipe Line Company with regard to utilization of facilities proposed to be installed by that company" (United's Stipulation's Exh. 3(a)).

[42] So, "Negotiations are under way with United Gas Pipe Line Company, looking to utilization by Applicant of some of the capacity in the 24'' pipe line proposed to be built." So, in its letter to the Board of March 16, 1945, eliminating facilities from the application.

[43] Testimony of Southern's and United's witnesses in Docket No. G-622 (United's Stipulation's Exhs. 1, 6, 7, 8, 10 and 11).

[44] Testimony of United's witness (United's Stipulation's Exh. 10).

[45] See, *United Gas Pipe Line Company*, 4 FPC, at 315, 318.

[46] Incidental references by Southern's witness to a somewhat similar arrangement proposed by United for the transportation of 114,000 Mcf of gas for Tennessee are far from conclusive in this matter (United's Stipulation's Exhs. 1, 8, and 10).

[47] A further, but not solely determining, factor was the ultimate approach of the date of expiration of its option on Production's reserves, December 31, 1952, when Production would be free to sell its reserves at will.

[48] The first instance to the contrary occurred when United responded to Southern's notice of July 31, 1950 to the effect it would have insufficient Carthage gas to furnish Southern's increased line requirements of 550,000 Mcf per day.

Finally the mere selection of a term of 20 years, ending in 1971, for the transportation contract, based upon an estimate by Southern of a life of Production's reserves of 21 plus years at an assumed contract rate of production of 55,000 Mcf per day, would not, and does not, properly serve to imply that Southern thus undertook to obligate itself as responsible for a fixed portion of United's Carthage line capacity without regard to its use thereof, particularly where, as stated previously, the line's original size was determined (G–622) prior to any mutual consideration concerning Southern's eventual resort to Production's gas.[50]

Billing Under the Conversion Tariff

Subsequent to the date of filing of United's Rate Schedule No. 87 on October 1, 1945, and prior to the date of filing of the new transportation contract as Rate Schedule No. 112–B on February 2, 1952,[51] the Commission issued its Order No. 144, effective December 1, 1948, which amended Part 154 of its general rules and regulations governing the form, composition, and filing of gas rate schedules and tariffs, and required the restatement of all filed effective schedules, but pending the restatement, permitted schedules to be filed in accordance with Part 154 as previously in effect (Sec. 154.82). This Order also provided that except as superseded by, or in conflict with, other applicable provisions of the tariff, each contract on file as an effective rate schedule would continue as an executed service agreement until expired or replaced by one properly executed (Sec. 154.85).

Following termination of certain proceedings in the Court of Appeals for the District of Columbia Circuit concerning the validity of Order No. 144,[52] the Commission, by order of October 16, 1950, in Docket No. G–1508, directed United to file its tariff in conformity with the amended regulations (9 FPC 1161), with which United complied by filing on July 3, 1952, a conversion tariff designated as its FPC Gas Tariff, Original Volumes Nos. 1 and 2, effective August 3, 1952,[53] and by which it proposed to supersede certain filed rate schedules, including Rate Schedules Nos. 126–A and 126–B,[54] and impose increases, including those applicable to sales to Southern under the corresponding conversion Rate Schedule PL–3 and the transportation for Southern under the corresponding conversion Rate Schedule T–3. Consequently, as required by Order No. 144, United also filed its several statements identifying the portions of the pre-existing contract of September 7, 1945, and the transportation agreement of May 7, 1951 which were to remain in effect as not superseded by, or in conflict with, other applicable provisions of its tariff (Sec. 154.85).[55] The latter, however, failed to include the pricing provision of the contract and thus the charge imposed by Art. VIII of the transportation contract of May 7, 1951 based upon the maximum volume delivered for transportation in any one day during the past 12 months, up to 55,000 Mcf, was omitted.

---

[49] After the conclusion of the proceedings in G–1308 in May 1950, United offered to transport this gas at the charge of 45 cents per month per Mcf of the previous 12 month's maximum daily quantity which at an assumed 100 percent load factor would average 1.48 cents per Mcf. The cost to Southern of constructing its own facilities consisting of 29 miles of 12-inch pipeline, 64 miles of 14-inch loop line, and compressors, totaling some $3,420,000, or more, converted to annual fixed charges and operating expenses of at least $588,050, would have averaged a corresponding 2.93 cents per Mcf.

[50] Southern estimated Production's recoverable reserves as of January 1, 1950, to be 437,470,000 Mcf, which indicated a life of 21 plus years, assuming production at the rate of 55,000 Mcf per day or an average of 20,088,750 Mcf per year. This acreage is reasonably scattered. It appears that in G–1447 (1950) United itself rested upon estimates which indicated a life of field good to 1972.

[51] First tendered for filing on July 18, 1951, but rejected, along with the new sales contract similarly tendered, for failure to file the supporting data required for changes and increases in rates and charges (see, 11 FPC at 857). Both schedules (No. 112–A, sales, filed November 26, 1951, and No. 112–B, transportation, filed February 2, 1952) involved rate changes or increases, and were suspended by Commission's orders of December 21, 1951 to May 26, 1952, and February 28, 1952 to August 3, 1952, respectively (see, 10 FPC 1633, and 11 FPC 856), as was a supplementary agreement dated January 8, 1952 reducing the volume of gas sold under Rate Schedule No. 87 in the event the transportation contract became effective prior to the new sales contract (Rate Schedule No. 87, Supp. No. 2, Docket No. G–1750, *et al., supra*).

[52] *United Gas Pipe Line Company* v. *F.P.C.* (CADC-1950) 181 F. 2d 796.

Instead, the conversion tariff proposed a new monthly demand charge based upon the maximum daily quantity for such month,[56] *i.e.*, the maximum volume which United was obligated to transport for Southern as specified in a service agreement.[57] The former provision had become effective July 23, 1952, upon a filing made pursuant to the terms of the Commission's order of May 27, 1952, in Docket No. G–1750, *et al.*, (11 FPC 1016, 1019), while the latter, suspended to January 3, 1953, by the Commission's order of July 31, 1952, in Docket No. G–2019 (11 FPC 1162, 1164), became effective under bond upon expiration of the suspension period, by Commission's order issued January 14, 1953 (13 FPC at 402).

By letter of July 3, 1952, United had duly advised Southern of the filing of the conversion tariff and the statement required by Section 154.85 of the Regulations.

Thereafter, pursuant to the terms of the transportation contract, and by letter dated September 8, 1952, Southern requested to the effect that commencing July 23, 1952, until further notice, United transport for Southern 44,500 Mcf per day.[58]

---

[53] See, *United Gas Pipe Line Company,* 13 FPC 398 (1954).

[54] Rate Schedule Nos. 126–A and 126–B were filed July 2, 1952, as directed by the Commission in its certificate order of May 27, 1952, in Docket Nos. G–1750, *et al.* The former to effect a proposed reduction in rates proposed in Rate Schedule 112–A, from 45 cents per Mcf per month demand and 9½ cents commodity, to a corresponding 38 cents per Mcf per month and 5 cents per Mcf, and the latter to effect a reduction in the rate proposed in Rate Schedule 112–B from 45 cents to 38 cents per Mcf of billing demand per month, both Rate Schedules Nos. 112–A and 112–B having been dismissed by the order (11 FPC 1016).

[55] Rate Schedule No. 87 was in effect until superseded by Rate Schedules 126–A and 126–B on July 23, 1952, which later were, on January 3, 1953, in turn superseded by the conversion tariff's Rate Schedules Nos. PL–3 and T–3, respectively.

[56] Expressed as "2.6¢ multiplied by the product obtained by multiplying the number of days in the month by the maximum daily quantity for such month" (Rate Schedule T–3, Sec. 3(a)).

[57] FPC Gas Tariff, Original Volume No. 1, Rate Schedule T–3, Sections 3 and 5, Original Sheets Nos. 68A and 68B, issued July 3, 1952. While a new service agreement was finally tendered by United on August 17, 1962, after the filing of Southern's informal complaint in Docket No. IN–953, none has been executed by Southern.

[58] 15.025 psia.

Thereafter, to January 24, 1956, when Southern first requested its full contract quantity of 55,000 Mcf (15.025 psia), requests in the premises were:

From—	To—	Volume requested (Mcf) (15.025 psia)	Contract billing demand (Mcf) (14.9 psia)
July 23, 1952	Aug. 1, 1954	44, 500	44, 873
Aug. 1, 1954	Sept. 7, 1954	31, 000	44, 873
Sept. 7, 1954	Nov. 1, 1954	32, 116	44, 873
Nov. 1, 1954	Aug. 1, 1955	45, 000	45, 378
Aug. 1, 1955	Oct. 1, 1955	23, 596	45, 378
Oct. 1, 1955	Nov. 9, 1955	9, 832	45, 378
Nov. 9, 1955	Nov. 11, 1955	29, 496	45, 378
Nov. 11, 1955	Dec. 2, 1955	44, 244	45, 378
Dec. 2, 1955	Jan. 24, 1956	34, 412	45, 378

United's billing was initially consistent with the terms of the transportation contract and from July 1952 to January 1, 1953, United billed Southern on the basis of a billing demand of 44,500 Mcf, the amount requested for transportation. However, from January 3, 1953, when Rate Schedule T-3 became effective as a part of the tariff,[59] United billed and Southern paid a demand charge which reflected use of a constant quantity of 55,460 Mcf (14.9 psia) per day although the first request for transportation of such an amount was not made until January 24, 1956, as aforesaid.

Thus, on the basis of contract demands set forth in the foregoing table, United's conversion tariff's demand charge of 60 cents per Mcf was applied in a manner to impose upon Southern an increase in demand charge cost of approximately $72,000 per year.[60]

Conclusion as to Change in Billing Demand

It is concluded, therefore, that the provision in United's conversion tariff of a fixed billing demand, in lieu of one which depended upon the amount of gas requested, operated to effect a substantive change in the application of the terms of the transportation contract of May 7, 1951.

Intent of Section 154.85

The preface to Order No. 144 states that Sec. 154.85 was redrafted to avoid the charge that the provisions of the Order would affect substantive rights and to make clear the intent to permit contracts, on file as effective rate schedules, to continue in effect as executed service agreements until expired or superseded. Accordingly, while Sec. 154.85 requires that the natural-gas company, by statement filed concurrently with the tariff, identify the provisions of the contract which are to remain in effect as not superseded by, or in conflict with, other applicable provisions of the rate schedule and general terms and conditions, it further provides that agreements intended to effect a change or amendment in the contract may be made only by the execution of a form of service agreement contained in the tariff, and the preface sufficiently indicates why no method of change, other than that by agreement, is suggested or recognized.

Moreover, the question whether substantive changes are within the intent and purpose of the Section received its full answer in proceedings in the Court of Appeals, District of Columbia Circuit, where the Commission gave the Court its "binding assurance" that Order No. 144 would operate prospectively, and affirmed that it interpreted the same "as not authorizing the making of any change in an effective rate, charge, or contract provision, without compliance with the Natural Gas Act." (*United Gas Pipe Line Company* v. *F.P.C.* (CADC–1950), 181 F. 2d 796, 799).

---

[59] Which included an index stating 55,460 Mcf to be the "maximum daily quantity" applicable to the transportation agreement of May 7, 1951.

[60] Effective January 3, 1953 (see, 13 FPC at 406 (G-1142, *et al.*))

Further, United explicitly states that it does not contend that the filing of a statement accompanying a conversion tariff automatically effects such a change as that in the billing demand, but rather that it rests upon a contention to the effect that the filing of the statement served as notice to Southern that the pricing provision of the transportation contract was not being retained as a part of the service agreement, to which Southern consented in a settlement reached in proceedings in United's Docket No. G–1142 (Br. pp. 81–82, 93).

It is concluded, therefore, that the substantive change attempted by United in its conversion tariff's provision for a fixed billing demand is beyond the intent and purpose of Sec. 154.85 of the Commission's Regulations under the Act.

Billing Under the Settlement Tariff

The tariff filed to effectuate the terms of the settlement in G–1142, *et al.*, and thus supersede Rate Schedule T–3 of the conversion tariff,[61] provided a demand charge based upon the maximum daily quantity, and a definition of the latter, which was, to all practical purposes, in accord with similar provisions of the schedule of the conversion tariff.[62]

United claims that Southern, by agreement to the settlement tariff in G–1142, *et al.*, formally consented to the use of a fixed demand of 55,460 Mcf per day in billing for the transportation of Carthage gas.[63]

The settlement, presented of record in the hearing session of August 17, 1954, was based principally upon several documents (Exh. Nos. 77–79) which reflected the results of Staff's examination and allocation of United's recorded costs as related to a given test year (1952),[64] of which Exh. 79 compared estimated revenues based upon a demand of 44,872 Mcf in regard to rates effective prior to the proposed increases and a demand of 55,460 Mcf in regard to both the increased rates then in effect and Staff's proposed trial (settlement) rates.

However, Staff counsel, in formally reporting the actions of the conference concerning the stipulation, stated of record that the participants had agreed that "neither United or the Commission's Staff nor any other affected party is to be considered as agreeing with the methods used for determining cost of service, or with the principles underlying the results reflected in the proposed settlement," and that it was understood that "this agreement will not prejudice the rights or contentions which any of the parties are asserting or may assert in any proceeding now pending or in the future arising before this Commission."

---

[61] *United Gas Pipe Line Company,* 13 FPC at 407 and 417.

[62] The conversion tariff schedule, effective as of January 3, 1953: in substance, 79 cents per Mcf of the maximum daily quantity for such month; the settlement tariff, effective as of August 1, 1954: 60 cents per Mcf of maximum daily quantity in effect during the billing month (Rate Schedule T–3, para. 3(a)). Conversion and settlement tariffs to the common effect that the maximum daily quantity is the maximum volume specified in the service agreement (Rate Schedule T–3, paras. 6 and 5, respectively), and that a contract in effect on the effective date of the tariff remains in effect as an executed service agreement to the extent not superseded by or in conflict with the tariff (General Terms and Conditions, para. 13.1). The settlement tariff, in apparent recognition of the practice under the conversion tariff from January 3, 1953, added that for such agreements the maximum daily quantity shall be that specified in an Index appearing on Sheet No. 99 of First Revised Volume No. 1 (Rate Schedule T–3, para. 5.1).

[63] The consolidated proceedings (G–1142, *et al.*) involved all of United's jurisdictional rates and charges for the sale and transportation of natural gas (13 FPC at 399), and included an investigation under Section 5(a) of the Act initiated by the Commission's order of October 12, 1948 (G–1142), and rate increases under Section 4(e) thereof as proposed in United's conversion tariff (G–2019). Hearings held in 1953 and early 1954 were followed by conferences which resulted in the settlement, agreed to by all participants but one, Mississippi River Fuel Corporation.

[64] A fourth exhibit (No. 80) comprised a form of gas tariff to be filed to effectuate the terms of settlement.

The Commission, in its opinion approving the settlement, accorded full recognition to each reservation (13 FPC at 408–409), and provided, in part, that its order would be without prejudice "to any claims or contentions which may be made by the Commission, United, or any other affected party hereto, in any proceeding now pending or hereafter instituted by or against United or any other companies or persons" (13 FPC at 419–420).

United's counsel in reply to Staff counsel's foregoing report stated his general agreement thereto and offered in evidence Exh. Nos. 77–80, *supra*, only for the purpose of extending and explaining his own acceptance.

Southern's counsel also limited his formal statement, in part, to one of acceptance of Exh. Nos. 77–80 as affording a basis upon which Southern agreed to recommend the rates proposed, and, in oral argument before the Commission, made specific reference to Exh. 79 only as it demonstrated the over-all savings expected with respect to its purchases at Kosciusko and Monroe, and the transportation of Carthage gas, adding, in effect, that Southern had consented because in the "package" presented to it, United had specifically agreed to enlarge the reserves that could be called upon to support deliveries at Monroe.

Staff's association in Exh. 79 (G–1142, *et al.*) of a contemporaneous billing demand with earlier rates and a probable prospective demand with prospective rates, neither requires nor justifies the inference that Southern's reliance upon Exh. 79 for settlement purposes represented a consent to imposition of the contract maximum quantity as a permanent fixed billing demand. United's contention that Southern's reservations in G–1142, *et al.*, relate only to cost methods and principles fails to accord the recognition required both as to the broader reservation of rights and contentions with respect to future proceedings and the basic and controlling purpose of the settlement to arrive at generally acceptable test year cost of service result in terms of rates.

It is concluded that the formulation, acceptance, and approval of the settlement tariff in G–1142, *et al.*, does not present a question in regard to the transportation contract that is ultimately different from that considered above with respect to the conversion tariff.

Conclusion as to Change in Billing Demand

On the basis of the foregoing considerations it is further concluded that, except for possible application of the doctrine of estoppel, hereinafter considered, the provision of a fixed billing demand in United's settlement tariff in G–1142, *et al.*, in lieu of one depending upon the amount of gas requested, operates to effect an unsupportable substantive change in the application of the terms of the transportation contract of May 7, 1951.

The "Mobile" Doctrine

In *United Gas Pipe Line Company* v. *Mobile Gas Service Corporation*, 350 U.S. 332 (1956), the Supreme Court held that a natural gas company could not unilaterally effect a change in the specified rate of a long term contract simply by filing a new rate schedule with the Commission. The Court stated that the Act recognizes that rates to particular customers may be set by individual contract, does not affect the initial rate-making and rate-changing powers of natural gas companies, and does not confer the right, not otherwise possessed, to change rate contracts by unilateral action. Under this holding a new schedule which purports to effect such a change is a nullity and of no effect upon the status of the contract rate as the lawful rate. It is apparent that the doctrine of this case is as applicable to a unilateral change in the specified billing volume as to the specified charge, and United does not contend to the contrary.

However, United does contend that Southern agreed of record to the rate settlement in G–1142, *et al.*, wherein rates had been tested as to revenue results in part upon the assumption of a constant quantity to be transported for Southern, and the tariff purported to adopt a fixed demand in respect thereto; and, further contends to the effect that Southern's subsequent performance and payment constitutes conclusive evidence of its consent and agreement that the tariff was thus correct and acceptable.

Nevertheless, while Southern in effect may have stipulated a partial waiver of the application of the billing demand provisions of the contract, the fact pointed out in the preceding section hereof, that it has not consented that the contract maximum quantity become the permanent fixed billing demand under the doctrine of the *Mobile* case saves to it the billing demand provisions of the transportation contract.[65]

Conclusion as to United's Freedom Under "Mobile"

It is concluded, therefore, that United is not free under the "Mobile" doctrine to effect an unilateral change in the billing demand provisions of the transportation contract of May 7, 1951.

The Estoppel Issue

United's contention that Southern's conduct and performance estops the latter from denying or claiming to the contrary of tariff terms and conditions relates both to the former's conversion and settlement tariffs.

With respect to the conversion tariff, United's case is that by the filing on July 3, 1952, of the tariff and statement in G–2019 Southern was on notice that the pricing article of the transportation contract of May 7, 1951 (Art. VIII, Rate Schedule 126–B) was not being retained as a part of the tariff or service agreement, that unless Southern objected, the tariff would control and require payment under Rate Schedule T–3 for 55,460 Mcf per day, whether transported or not, and that Southern's subsequent performance of the tariff's obligations in this respect, without objection,[66] imports an agreement thereto.

With respect to the superseding settlement tariff, United's case is that in addition to continuing its payments without objection,[67] Southern, in consideration of United's agreement to increase deliveries at Monroe [68] and apply thereto system supplies in lieu of the previously limited Carthage production,[69] accepted settlement knowing that United proposed to retain in the settlement tariff the fixed billing demand first applied under the conversion tariff (Exh. 80, G–1142, *et al.*) and that Staff had computed comparative revenues under Rate Schedule T–3 in relation to both existing and trial (settlement) rates by use of a like billing demand (Exh. 79, G–1142, *et al.*).

United associates with the foregoing certain economic advantages alleged to have been obtained by Southern in earlier negotiations related to the Carthage field contract of September 5, 1945 (G–622), and the transportation contract of May 7, 1951 (G–1750, *et al.*), asserting that these provided a premise for Southern's acquiescence in United's billing under each tariff.

---

[65] The holding in *Mississippi River Fuel Corp.* v. *F.P.C.* (CADC-1957), 252 F. 2d 619, 625 (cert. den. 355 U.S. 904) which sanctioned United's tariff omission of a clause in its pre-existing contract with Mississippi River Fuel rests on the fact of discrimination and does not support United's contentions in this proceeding.

[66] From January 3, 1953, the effective date of the tariff to August 1, 1954, the effective date of the settlement tariff.

[67] From August 1, 1954, the effective date of the settlement tariff, to January 24, 1956, the effective date of Southern's first request for transportation of the full contract quantity of 55,460 Mcf per day.

[68] From 65,546 Mcf to 76,000 Mcf at Monroe; an increase from 100,839 Mcf to 150,839 Mcf per day at Kosciusko was in fact related to Southern's exercise of an option and not to settlement considerations. United alleges that the increase at Monroe enlarged its liability and created a detriment to it.

[69] As in the sales contract of May 7, 1951, Rate Schedule No. 126–A.

Although Southern agrees that for the period January 3, 1953, to January 24, 1956, it was billed and, without objection, paid on the basis of a fixed billing demand which exceeded the billing demand provided by the contract, that it obtained certain considerations from United as a condition for agreement to the settlement (G–1142, *et al.*),[70] and that it did gain substantial advantages in the negotiations which related to the Carthage field and transportation contracts,[71] it answers to the effect that it is not shown that United suffered any disadvantage because of Southern's failure to insist upon its rights and payment of charges computed otherwise than as provided in the contract, that in the settlement in G–1142, *et al.*, not only was United compensated for concessions,[72] but Southern limited its agreement to rate results, and saved its rights with respect to future proceedings.[73]

The evidence supports these answers. Indeed, both as a matter of fact and, as hereinafter set forth, of law, Southern's payment of excess charges is not of the significance that may first appear, for United not only fails to prove that any disadvantage resulted to it but an approximation based upon Southern's changes in the election of gas to be transported during the period July 23, 1952, through December 31, 1963,[74] indicates that during that portion when excess charges were paid (to January 1956) Southern requested annual average volumes not significantly different in amount or in year to year variation from the other corresponding annual averages.[75] Moreover, Southern's claim, to the effect that having received transportation of the maximum contract quantity (55,460 Mcf) on frequent occasions after the date of its first request therefor (January 24, 1956), it is to be considered, in the absence of evidence to the contrary, that a like quantity would have been transported upon any prior request, is valid on the basis of the terms of the contract and the principle that parties are expected to live up to what they have chosen to write, and, with regard to estoppel, is sufficient to put in question the significance to be attached to the length of period as well as number of the excess payments.[76]

United does not establish, as in this connection it must, that Southern's failure to object to United's omission of the pricing article of the transportation contract (Rate Schedule 126–B) in the latter's conversion tariff (Rate Schedule

---

[70] Including increased deliveries at Monroe and the application of system reserves thereto, without limitation to specific fields or source.

[71] Including a savings in cost of constructing and operating its own facilities for the transportation of Production's Carthage gas.

[72] That is for its agreement that Monroe deliveries would be supported by system supplies Southern agreed to accept a rate which included system costs.

[73] Southern also contends that the doctrine of estoppel has no place in regulatory proceedings, but the issues formulated by the Commission's Order herein and the conclusions here entered with respect thereto require no further conclusions with respect to this contention.

[74] United's Stipulation's Exh. 28.

[75] Using as a convenience a midnight to midnight day in lieu of the contract's 7 : 00 a.m. to 7 : 00 a.m. day, weighting volumes requested for a fraction of a day by that fraction, and deeming an apparent variation in pressure bases as of relatively insignificant effect.

[76] On the basis of a contract billing demand consisting of the maximum volume for any day within the past twelve months, Southern was properly billed and properly paid on 55,460 Mcf from January 1956 to April 1963, even though certain deliveries in the 1961–1962 season included gas loaned by United to make up a difference between the volume requested by Southern and that available from Production's acreage. It is noted that Sinclair Oil & Gas Company succeeded to Production's interests and, as of November 1, 1956, adopted the sales contract of May 7, 1951, with Southern, Production's Rate Schedule No. 2, as its own Rate Schedule No. 96.

T-3) was based upon any intent to mislead or willingness to deceive.[77] Nor does it establish, as it must, that it was thereby induced to pursue a course of action to its detriment, or has been actually injured.[78]

Morever, mere acquiescence would not prevent Southern from asserting what would ordinarily be its legal right,[79] and the mere making of a payment when not legally bound would not create an obligation to continue doing so.[80] Indeed, Southern's payment of charges on the basis of the maximum contract demand during a period when, because of its own circumstances or volition, it was taking less, is susceptible of more than the one construction that it had thereby assented to a change in the billing provisions of the contract, and any construction consistent with its rights does not offer a proper basis for the application of an estoppel against it.[81] Estoppels, not favored in the law and, in general, strictly construed,[82] cannot be based upon mere argument or doubtful inference.[83] To allow it on the grounds claimed here would result not in preventing wrongful injury to United but in relieving it of an existing obligation to Southern.

The result is the same if the stipulated facts be considered from the possible aspect of a waiver, which, in the absence of associated estoppel elements, involves simply an intentional and voluntary relinquishment of a right. It may be manifested, however, only by actions indicating a clear and unequivocable purpose[84] inconsistent with any intention other than that of waiving.[85] In the proceeding in G-1142, *et al.*, Southern was free to determine to what extent and in what respect an agreement to settle would operate to limit its resort to rights provided under the transportation contract.[86] Circumstances attending payments in the period of excess charges and reservations in rates proceeding settlements[87] establish that Southern never intended a permanent waiver of rights provided under the billing provisions of the transportation contract.

The fact, adverted to by United, that Southern, as a participant in more recent proceedings concerning United's rates, failed to raise the issue here involved neither requires nor justifies modification of the conclusions reached herein with respect to estoppel and waiver. The later proceedings initiated in the period 1955-1961[88] were settled by stipulation dated February 16, 1962, approved by the Commission by order issued March 12, 1962, wherein Southern again fully reserved rights for the future. Moreover, as late as the first four months of 1962 Southern requested transportation of the full contract quantity (55,460 Mcf) on as many as

---

[77] *Harvey* v. *Richard, et al.* (La., 1942), 7 So. 2d 674, 677.

[78] *Yates* v. *American Republics Corp.* (CA10-1947), 163 F. 2d 178, 180; *In re Steiners Improved Dye Works, Inc.* (CA7-1930), 44 F. 2d 557, 559; *Humble Oil & Refining Co.* v. *Trapp, et al.* (Ct. Civ. Apps., Texas, 1946) 194 S.W. 2d 781, 786.

[79] *Carey, et al.* v. *U.S.* (Ct. Cl. 1960), 276 F. 2d 385, 390; see, *Mahoning Inv. Co.* v. *U.S.* (Ct. Cl., 1933), 3 F. Supp. 622, 629.

[80] *O'Malley* v. *Wagner, et al.* (Ky., 1903), 76 S.W. 356.

[81] *Peoria Life Ins. Co.* v. *Poynor* (Ct. Civ. Apps., Texas, 1927), 297 S.W. 788, 790.

[82] *Scallan* v. *Simmesport State Bank* (Ct. App., La., 1961), 129 So. 2d 49, 55.

[83] *Scallan* v. *Simmesport State Bank, supra.*

[84] See, *Miravalle Supply Co., Inc.*, v. *El Campo Rice Milling Co.* (CA8-1950), 181 F. 2d 679, 685; *Pacific States Corp.* v. *Hall* (CA9-1948), 166 F. 2d 668, 671; *Yates* v. *American Republics Corp., supra; Victor Products Corp.* v. *Yates-American Mach. Co.* (CA4-1932), 54 F. 2d 1062, 1064.

[85] *Caterpillar Tractor Co.* v. *Collins Machinery Co.* (CA9-1960), 286 F. 2d 446, 451-452; *Coca Cola Bottling Co., Inc.* v. *Comm'r of Int. Revenue* (CA8-1942), 127 F. 2d 430, 433; *Mengel & Bro. Co.* v. *Handy Chocolate Co.* (CA1-1926), 10 F. 2d 293, 296; *Ottinger* v. *General Motors Corp.* (D. Ct. S.D.N.Y., 1939), 27 F. Supp. 508, 511.

[86] *Orr* v. *Mutual Life Ins. Co. of N.Y.* (CA8-1933), 64 F. 2d 561, 565.

[87] G-1142, *et al., supra;* G-9547, *et al., infra.*

[88] *I.e.,* G-9547, 1955; G-10592, 1956; G-12801, 1957; G-15360, 1958; G-18406, 1959; RP60-2, 1960; and RP61-18, 1961.

16 different occasions effective for a total of as many as 44 days,[89] and in discussions held as late as early 1962 sought to adjust its differences with United by mutual agreement, only failing which it filed this complaint.[90]

Conclusions as to the Estoppel Issue

Accordingly, on the basis of the foregoing it is concluded that Southern is not by past acquiescence and conduct with regard to the billing demand provision of United's Rate Schedule T-3 now estopped from complaining of that provision.

Status of Rate Schedule T-3 as "Just and Reasonable"

Southern contends that because of a decline in the volume of Carthage gas available to it for transportation, United's billing on the basis of 55,460 Mcf of demand presupposes a service which it no longer receives and results in a charge to it that is neither just nor reasonable as required by the Act. United responds to the effect that the Carthage line no longer operates at capacity and that, if Southern be obligated to pay on the basis of a demand significantly less than the maximum contract quantity, other customers, not notified of these proceedings and not parties thereto, would be required to bear an unjustified proportionately larger share of United's total cost of service.

From the stipulated facts it appears that since April 18, 1962, Southern's requests for transportation have not exceeded 35,000 Mcf (15.025 psia) per day; and that the Production-Sinclair Carthage acreage has been fully developed, the allowable production therefrom has been of a consistently declining order, 15 of the 27 gas wells on the acreage are under compression, and, in all probability, no quantity larger than 35,000 Mcf will be available therefrom for transportation for any substantial period in the future.

Use by United of a fixed billing demand of 55,000 Mcf (15.025 psia) is not only contrary to the flexible billing provisions of the transportation contract but would require that Southern pay for a service which it does not, and probably in the future, will not, receive. Obviously, charges based upon a fixed demand of 55,460 Mcf are not just and reasonable under the Act and have no legal support.

United's contention as to the resulting imposition of additional cost responsibility upon other customers is fully answered by Southern's reply that such a contingency properly relates to issues to be determined in those proceedings in which United proposes future rates which would have such an effect.

It is not alleged and cannot be found that granting Southern the relief to which it is entitled will impose an improper burden upon United.

Conclusion as to "Justness and Reasonableness" of Charge

Upon the basis of the foregoing, it is found and concluded that the provision of United's presently effective Rate Schedule T-3, specifying a fixed billing demand, is not just and reasonable and is unlawful under the Act.

Southern's Requested Relief

In its formal complaint Southern requests that the Commission recognize its right to reduce the maximum daily quantity to the maximum quantity tendered by Southern to United for transportation during the twelve month period ending with the last day of the previous month, and require that United submit to

---

[89] As previously stated during 1961–1962 season, at least, United did, temporarily and to a limited extent, make up transportation shortages in Southern's Carthage supplies against eventual redeliveries from this source.

[90] Southern filed its informal complaint on July 27, 1962, and its formal complaint herein on February 21, 1963.

Southern a service agreement providing that the latter shall have the right at any time and from time to time to reduce the maximum daily quantity to the maximum quantity tendered by Southern to United for transportation under such service agreement during such twelve month period. Staff counsel recommends that the relief sought be granted.

However, in accordance with the foregoing findings and conclusions, it will be sufficient that, United be required to refile effective as of May 1, 1963, the date upon which a billing demand less than 55,460 Mcf would have become effective under the billing provisions of the transportation contract, the billing provisions of its FPC Gas Rate Schedule T-3 so as to provide a flexible billing demand in accordance with the applicable provisions of its transportation contract of May 7, 1951 (Rate Schedule 126-B) and of the Order which follows as a part of this decision.

FURTHER FINDINGS AND CONCLUSIONS

Proposed findings and conclusions, and contentions of counsel, inconsistent with the findings and conclusions of this decision are without merit or not directly pertinent to a proper disposition of the issues herein and are herewith denied.

ORDER

Upon consideration of the record herein, the contentions set forth in the briefs and proposed findings of respective counsel, and for the reasons and upon the findings and conclusions set forth in the foregoing portions of this decision, of which this Order is a part,

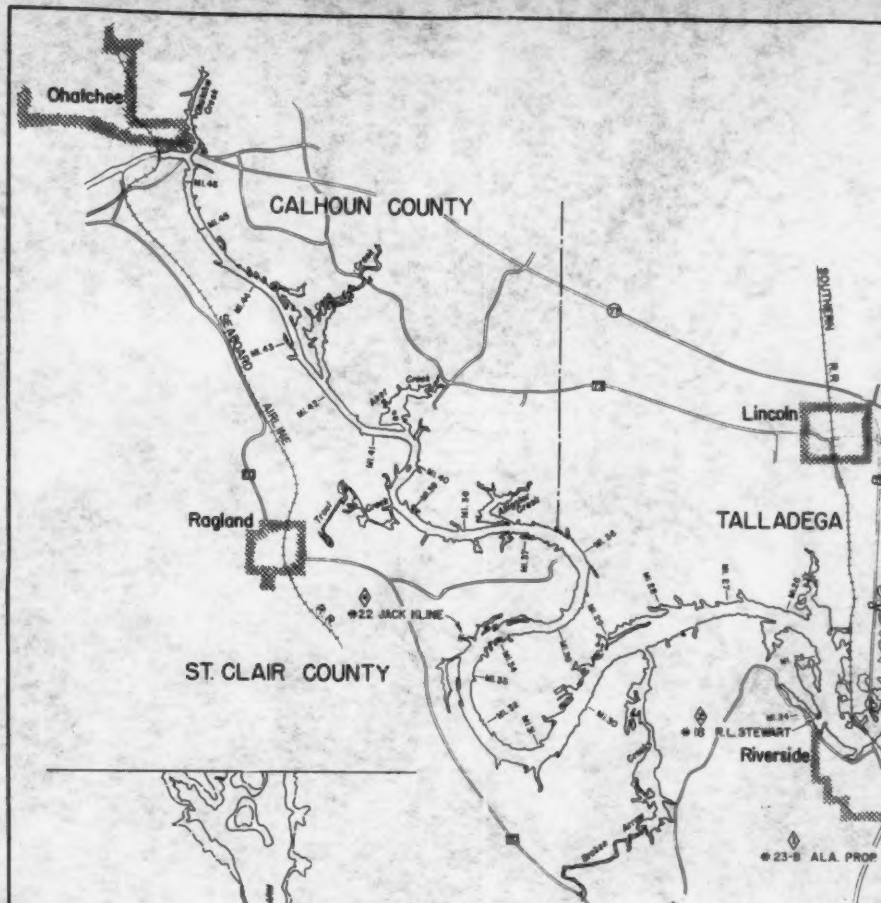
It Is By These Presents Ordered, subject to review by the Commission on appeal, or on its own motion, as provided by its Rules of Practice and Procedure, that:

(A) United shall, within 15 days from the date this Order becomes effective, and in manner and form satisfactory to the Commission, file revisions of the appropriate portions of its FPC Gas Tariff, First Revised Volume No. 1, to provide with respect to its Rate Schedule T-3, Transportation Service for Southern Natural Gas Company, and effective as of May 1, 1963, a flexible billing demand in accordance with the provisions therefor of Article VIII of its transportation contract of May 7, 1951, herein;

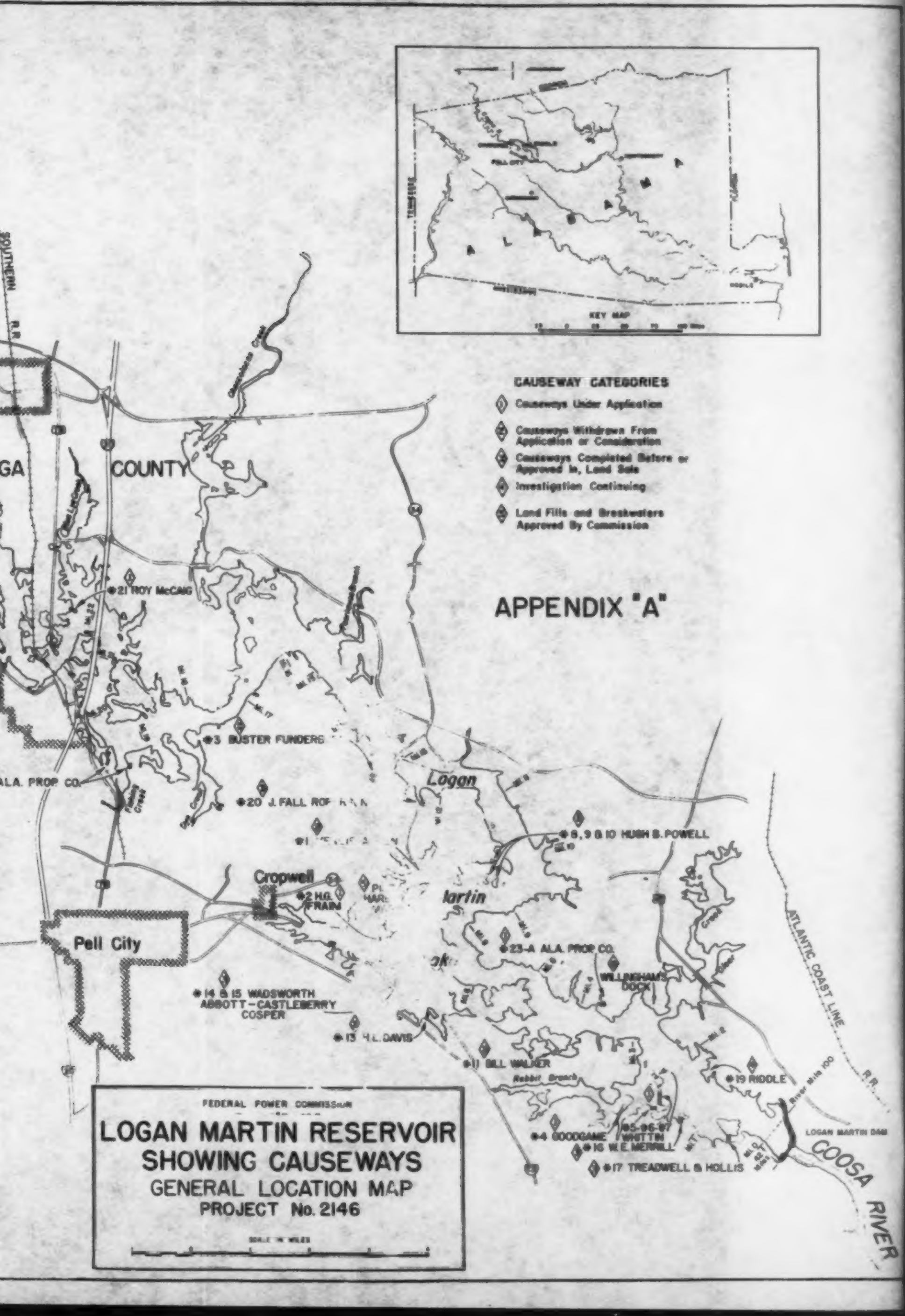
(B) In lieu of the filing required in Paragraph (A) hereof, United may file an executed service agreement providing that Southern shall have the right at any time and from time to time to reduce the maximum daily quantity to the maximum quantity tendered for transportation thereunder during the twelve months period ended with the last day of the billing month, accompanied by such other filing as is required to effectuate an appropriate reduction in such maximum daily quantity to 35,294 Mcf (14.9 psia); all within 15 days from the date this order becomes effective, and in manner and form satisfactory to the Commission.

(C) Upon satisfactory compliance with the provisions of Paragraphs (A) or (B) hereof, the proceedings herein shall be terminated.

Ewing G. Simpson,
Presiding Examiner.


Ohatchee
CALHOUN COUNTY
Mi.46
Mi.45
Mi.44
Mi.43
Mi.42
Mi.41
Mi.40
Mi.39
Mi.38
Mi.37
Mi.30
Mi.24
SEABOARD
AIRLINE
Creek
Ragland
#22 JACK KLINE
R.R.
ST. CLAIR COUNTY
SOUTHERN
R.R.
Lincoln
TALLADEGA
#18 R.L. STEWART
Riverside
#23-B ALA. PROP
ARM
BRANCH
RABBIT
NO.4 J.W. GOODGAME
NO.5
NO.6
NO.7
F.O. WHITTEN
N

APPENDIX "A"



FEDERAL POWER COMMISSION

LOGAN MARTIN RESERVOIR
SHOWING CAUSEWAYS
GENERAL LOCATION MAP
PROJECT No. 2146

KEY MAP
CAUSEWAY CATEGORIES
Causeways Under Application
Causeways Withdrawn From Application or Consideration
Causeways Completed Before or Approved In, Land Sale
Investigation Continuing
Land Fills and Breakwaters Approved By Commission
SCALE IN MILES
SOUTHERN R.R.
GA
COUNTY
21 ROY McCAIG
3 BUSTER FUNDERS
ALA. PROP. CO.
20 J. FALL ROF
Logan
Martin
Cropwell
2 H.G. FRAIN
Pell City
8, 9 & 10 HUGH B. POWELL
23-A ALA. PROP. CO.
WILLINGHAM'S DOCK
14 & 15 WADSWORTH ABBOTT-CASTLEBERRY COSPER
13 H.L. DAVIS
11 BILL WALKER
Rabbit Branch
19 RIDDLE
4 GOODGAME
5-6-7 WHITTIN
16 W.E. MERRILL
17 TREADWELL & HOLLIS
ATLANTIC COAST LINE R.R.
River Mile 100
LOGAN MARTIN DAM
COOSA RIVER

OPINION NO. 461

ALABAMA POWER COMPANY, PROJECT NO. 2146

OPINION AND ORDER MODIFYING AND ADOPTING INITIAL DECISION ON APPLICATIONS TO DETERMINE STATUS OF CAUSEWAYS

(Issued May 26, 1965)*

Syllabus

1. Logan Martin Development causeways will contribute to beneficial public uses of project and should be approved. P. 1107.
2. Evidence does not establish need for more than one bridge each in Causeways Nos. 4 and 6 and public interest does not warrant Commission specification of bridges higher than those recommended by appropriate State and local officials. P. 1107.
3. Commission has no authority to adjudicate claims for money damages. P. 1107.
4. Request for posting of construction bond denied; should there be noncompliance with Commission order, complaint proceeding can readily be initiated. P. 1107.
5. In a proceeding relating to Sections 4(e) and 10(a) of the Federal Power Act, Commission *authorizes* Licensee to grant permission for use of project lands and properties for causeways.

Carey J. Chitwood and *Joseph M. Farley* for Alabama Power Company.

Curtis Wright for J. W. Goodgame and F. O. Whitten.

Charles A. J. Beavers and *Frank M. James* for Clearwater Point Estates, Inc. (George W. Barber, Jr., John D. Brantly, John Bryan, Holland Faught, John W. Hamner, Mrs. Ed Hodges, Charles E. Lynn, Jr., Charles E. Lynn, Sr., Kealen Rice, Kealen Rice, Sr., Hardin M. Ritchey, Roy L. Shelton, Roy Shelton, Sr., H. C. Springer, Frank P. Sudduth) and for, C. E. Butterworth, Hannah M. Conway, James A. Conway, Percy G. Conway, Shirley S. Conway, E. B. Dawson, Jones J. Dunham, Mrs. Jones J. Dunham, Sidney Finn, Donald Giles, Marion E. Hogan, Marion E. Hogan, Jr., Robert S. Hogan, Sidney P. Kent, Oscar W. Pardue, William E. Poole, Aldine R. Roth, Earl A. Roth, J. W. Reynolds, Bobby G. Sweatt, Elsie Sweatt, William A. Willis, Jr., A. H. Wuehrman, Mrs. A. H. Wuehrman, individually.

W. E. Prescott, III, for Roy McCaig

John D. Lane and *George F. Bruder* for Staff of the Federal Power Commission

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

Ross, *Commissioner:*

This proceeding arose on the filing by Alabama Power Company, Licensee of constructed Project No. 2146 on the Coosa River in Alabama, of applications for a determination whether certain causeways and other land fills, heretofore unauthorized although presently in varying stages of construction, should be allowed or excluded from the reservoir area of its Logan Martin Development. Location of these causeways is shown in the appended map. The causeways would occupy project lands in the power or flood pools of the reservoir and have been or would be erected by the owners of islands or peninsulas in the reservoir for the purpose of providing access by road to their properties. They will have no effect on the operations of the reservoir insofar as the power purposes of the project are concerned. Licensee has no objections to the causeways provided certain conditions are agreed to by the landowners.[1] It considers, however, and rightfully so, that under the terms of the license[2] it cannot permit the causeways to be constructed or to remain unless and until they have been approved by the Commission.

---

*Initial decision appears on P. 1109.

Our jurisdiction, which is accepted without opposition by all parties to the proceeding, is based on Sections 4(e) and 10(a) of the Federal Power Act and on the license authorizing the project as issued September 4, 1957,[3] and as since amended. The matter is now before us for decision on exceptions to an initial decision issued by Examiner Ewing G. Simpson on February 16, 1965, wherein he determined that the public interest will best be served by allowing the Licensee to permit use of the project lands for the causeways for which application has been made, on the ground that they will contribute to the greatest public use of the project waters and adjacent land for recreational purposes. With regard to two of the causeways, denominated in the record as the Goodgame Causeway No. 4 and the Whitten Causeway No. 6, the Examiner would require the construction of bridges providing a verticle clearance of 11.5 feet above the full power pool and a horizontal clearance of 34 feet as recommended by the St. Clair County Engineer and the Alabama Highway Department. The inclusion of these bridges in the causeway plans is agreed to by the applicants Goodgame and Whitten. The Examiner declined to adopt recommendations by those opposing the authorizations for (1) a requirement of two bridges in each of Causeways No. 4, 6 and 7 to allow for one-way boat traffic, and (2) raising of the bridge clearance to 20.5 feet to permit sailboats to pass through.

The exceptions to the initial decision involve only Causeways No. 4, 6 and 7, and the determinations made in regard thereto. Interveners filing the exceptions[4] contend that approval of these causeways under the conditions applied by the Examiner is not in the public interest and that the causeways either should be completely removed or, alternatively, that the bridges ordered in Causeways No. 4 and 6 should be increased in height and number.[5] They ask also for compensation for consequential damages if the causeways are not ordered removed and request that a date be set for the completion of the causeways and bridges to the proper specifications. They also assign error to the fact that the Examiner, in ordering bridges in Causeways No. 4 and 6, neglected to direct the excavation of the land underlying the bridges to allow for boat passage. Finally, they request that a construction bond be required to insure compliance with the Commission's decision and order in this proceeding.

The record demonstrates that the Goodgame and Whitten causeways will restrict to a degree access by boat to and from Rabbit Branch, a bay of the

---

[1] These conditions include, among others, that the Licensee be indemnified against any liability arising from the causeways, that payments of a specified amount be made for each causeway, such payments to be applied as credits in establishing the actual legitimate original cost of the development, and that all conflicts of interest with other interested property owners be resolved to the satisfaction of the Federal Power Commission.

[2] Article 26.

[3] *Alabama Power Co.*, Opinion No. 305, 18 FPC 257, rehearing denied 18 FPC 565.

[4] Filed by Charles A. J. Beavers, Esq. and Frank M. James, Esq. for and on behalf of Clearwater Point Estates, Inc. and 24 individual persons.

[5] Interveners earlier had requested separate bridges in both Causeway No. 6 and Causeway No. 7. However, the exceptions indicate that they no longer seek to secure a requirement of a bridge in the latter causeway, provided that the bridge in Causeway No. 6 is in accordance with their specifications.

Logan Martin reservoir,[6] and obstruct certain views across the water. The causeways together reduce by somewhat more than half the channels capable of passing small boats at full power pool and by an additional amount at minimum power pool. The interveners claim that while sailboats could navigate the channels remaining at the Whitten causeways, it would be difficult and would interfere with powerboat traffic. The staff's recreation witness expressed the opinion that if ordinary precautions were taken the channels at the causeways could be navigated by all craft.

The bridges in Causeways No. 4 and 6 will serve to facilitate powerboat passage and small sailboats. In addition, use of the bridge passages by these boats will lessen the number of such boats traversing the open channels and will leave more room for larger sailboats to maneuver.

The most important beneficial effect of the Goodgame and Whitten causeways is that they provide access to approximately 30 acres of island land eminently suited for recreational purposes. About half the land will be in private residential development and the other half will be used for the largest proposed commercial recreation development on the reservoir, providing facilities for lodging, dining, boating and swimming for the public. Additional advantages are that the causeways will serve as breakwaters and provide new fish habitat, as well as land access thereto. Both owners have expressed an intent to dedicate to the county the roads on their causeways and islands when they are completed. The county commissioners, some of whom testified at the hearing in favor of the causeways, have stated their willingness to accept these dedications.

On our consideration of the record we conclude that the causeways will contribute to the beneficial public uses of the project and should be approved. The opening of access by road to the islands and the other advantages cited outweigh, in our opinion, the restriction of boat access to Rabbit Branch and the interference with the cross-water view. We further agree with the Examiner that the evidence does not establish a need for more than one bridge each in Causeways No. 4 and 6 and that the public interest does not warrant our specification of bridges higher than those recommended by the appropriate State and local officials. In the absence of any evidence by interveners of the additional cost involved in requiring bridges with greater clearances, we are unable to find that such bridges would be an appropriate requirement in view of the limited convenience which could be expected to result.

We have earlier determined that this Commission has no authority to adjudicate claims for money damages.[7] Accordingly, the exception seeking such recovery is denied. The exceptions relating to the setting of a time limit for the completion of construction and the excavation of areas under the bridges are the subject of modifications made in our order from that recommended in the initial decision. The request for the posting of construction bonds will be denied since, if the Commission's order is not complied with, a complaint proceeding can readily be initiated.

As pointed out by the Licensee, the Examiner's decision includes a reference to Ranch Marina in footnote number 22 on page 1113 which should be omitted The reference will be deleted.

---

[6] Prior to construction of the dam and creation of the reservoir, Rabbit Branch was a small stream which during the winter months was about 6 to 8 feet wide and 6 inches to 2 feet in depth; during summer it would dry up completely. It is now approximately 3 miles long and, at maximum, about ½ mile wide. The interveners are persons who recently have bought land in a development located along Rabbit Branch and for the most part, plan at some time in the future to erect homes and private boating facilities thereon. Estimates for the number of such homes as given in the record range from 250 to 1,000.

[7] *Idaho Power Co.*, Project No. 1971, Order Dismissing Complaint, 29 FPC 572.

In all other respects the Examiner's decision is approved and will be adopted by us.

The Commission orders:

(A) Licensee may grant permission to use project lands and properties, for the causeways, bridges, and fills (collectively causeways) for which formal application has been made herein, *to-wit:* Fraim Causeway No. 2, Goodgame Causeway No. 4, Whitten Causeways Nos. 5, 6 and 7, McCaig Causeway No. 21, and Alabama Property Company Causeways Nos. 23-A and 23-B, *provided* that:

(1) Licensee reserve for itself and its successors and assigns the right to use its project lands and properties as may be required to safely and efficiently operate and maintain the project for beneficial public uses, including recreational purposes;

(2) In the event a causeway is to be a private road, Licensee secure agreements that the causeway owners and their successors and assigns will maintain, repair, alter or remove the causeways as required by the public convenience, health or safety and will release and indemnify the Licensee from all liability respecting the causeways or their effects and will reimburse it for any expenditures made in connection therewith;

(3) In the event all other requirements (except paragraph A(2) above) of this order have been complied with and thereafter the causeway is dedicated as a public road and accepted as such by the appropriate county authority, Licensee is authorized to grant an easement to the county, upon its request, for a public road as to any portion of a causeway lying in the pool area and to join with the appropriate landowner in granting an easement to the county for a public road as to any portion of a causeway lying in the flood easement;

(4) Licensee obtain payment or allowance from the owners, if such has not already been obtained, as just and fair compensation to it for the use of its project lands and properties by the causeways.

(B) Construction of the causeways, bridges, and land fills designated in Paragraph (A) hereof shall be initiated not later than October 1, 1965, and be completed not later than March 31, 1966, and thereafter shall be maintained to the design specifications contained in the Licensee's applications as amended by the Licensee's filing of October 5, 1964 (Item M), and any additional specifications that may be set from time to time by the Commission upon its own motion, or upon recommendation by the Licensee, Corps of Engineers, or State and local authorities, after notice and opportunity for hearing.

(C) In the event any of the persons seeking approval of causeways herein should, for any reason, choose to forego construction and to withdraw their applications, such persons shall cause the removal of existing incomplete causeways and restoration of the terrain to its prior elevation or to a depth of five feet below normal winter elevation (460 feet above mean sea level), such removal to be completed by March 31, 1966.

(D) The areas underlying the bridges to be erected in Causeways Nos. 4 and 6 and their approaches shall be excavated to a minimum depth of five feet below normal winter elevation to allow boat passage.

(E) Within ninety days after the date upon which this order shall become effective, the Licensee shall secure the removal from project lands and properties of causeways pending before it for which no applications have been filed, or for which applications are deemed to have been abandoned, unless the owner thereof enters into the agreements and makes the payment or allowance required under Paragraph (A) of this order.

(F) The reference to Ranch Marina is deleted from footnote number 22, page 1113 of the Examiner's decision.

(G) The Examiner's decision, as modified herein, is hereby adopted as part of this decision and order.

(H) Except as herein granted, the exceptions to the Examiner's decision are hereby denied.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON PROCEEDINGS INITIATED UNDER PROVISIONS OF THE FEDERAL POWER ACT AND A LICENSE BY APPLICATIONS TO DETERMINE THE STATUS OF CAUSEWAYS

(Issued February 16, 1965)

SIMPSON, *Presiding Examiner:* These proceedings were initiated by the filing on February 14 and 17, and June 29, 1964, by Alabama Power Company, Licensee of Project No. 2146 on the Coosa River (River) in Calhoun, St. Clair, and Talladega Counties, Alabama, of its several applications in the premises and Commission's Order Fixing Hearing, issued August 10, 1964, in relation thereto.

The proceedings relate to the authority contained in, and jurisdiction conferred by, Sections 4(e)[1] and 10(a)[2] of the Federal Power Act (Act), and particularly to the provisions of Article 26 of the license issued Alabama Power Company (Licensee), September 4, 1957, (Opinion No. 305, and as amended)[3] as applicable to the use and operation of the Logan Martin dam and reservoir.

On February 14, 1964, Licensee filed its letter to the Commission dated February 12, 1964, with several exhibits attached for consideration in regard to the approval or disapproval of the application to the Licensee of F. O. Whitten, Sr., for permission to construct Causeways Nos. 5, 6 and 7 on project lands in the Logan Martin reservoir; on February 17, 1964, it filed a similar letter dated February 14, 1964, also with several exhibits attached for consideration in regard to approval or disapproval of the application to Licensee of J. W. Goodgame for permission to construct a similar Causeway No. 4; and, on June 29, 1964, filed a further letter to the Commission, dated June 25, 1964,[4] with several exhibits attached for consideration in regard to the approval or disapproval of applications to Licensee of Roy M. McCaig, Charles R. Burgess and J. R. Moody for permission to construct a Causeway No. 21 and land fill.

As indicated by Exh. A, accompanying Licensee's application to the Commission filed February 14, 1964,[5] the Chairman of the St. Clair County Commissioner's Court, Pell City, Alabama, gave notice to Licensee by letter dated January 2, 1964, of a filing with the Commission on behalf of seven listed individuals for permits to construct eleven different causeways in the reservoir, and requested Licensee's consideration and approval to the Commission of each of the same,[6] to which Licensee replied by letter dated January 9, 1964, suggested that certain specified minimum information be supplied.[7] In response to this and subsequent requests Goodgame[8] and Whitten[9] among those listed, and another[10] submitted data of the nature requested, while three neither complied nor appeared at the hearing.[11] Of those remaining, one has since been resolved by Licensee on the basis of an oral understanding in fact reached between itself and a predecessor owner at the time of Licensee's acquisition of a flood easement and fee,[12] while another has endeavored to make a partial belated compliance by letter dated May 16, 1964, refusing to accept a condition as to Licensee's indemnification.[13] Accompanying Licensee's first two applications[14] are copies of a total of some 12 letters from individual owners of reservoir shore sites, which protest alleged effects of some or all of causeways as being generally adverse to property rights, health, and recreational uses, as well as scenic values, and by its Order Fixing Hearing, issued August 10, 1964, herein, the Commission noted that it had received numerous letters and petitions, some supporting and others opposing the causeways. The order, further reciting that the foregoing applications requested a determination whether causeways constructed without approval should be authorized or removed from the reservoir and whether certain causeways proposed for construction should be approved, found a public hearing respecting the matters involved and issues presented to be appropriate and in the public interest, and ordered such a hearing to be held concerning the same commencing September 9, 1964, at 10:00 a.m. at a place in Alabama subsequently designated by the Secretary's Notice of August 13, 1964, to be the Courthouse, Anniston, Alabama. Accordingly, these proceedings came on for hearing and were heard commencing on September 9, 1964, at the place and time provided, concluding on the following day. Appearances were entered on behalf of Licensee, Staff, and tentatively, as provided by the Rules, on behalf of three participants proposing to construct causeways and fills, and thirty-six opposing property owners.[15]

---

[1] Section 4(e) of the Act, in brief, authorizes the Commission to issue licenses for the construction, operation and maintenance of project works, including dams, reservoirs, power houses, transmission lines, and other items necessary or convenient for the development and improvement of navigation in, and for the development and utilization of power from, jurisdictional streams.

[2] Section 10(a) of the Act, in brief, provides that the license issued shall be on the condition that the project adopted, including maps, plans, and specifications shall be such as will be best adapted to a comprehensive plan for improving or developing a waterway for the use or benefit of interstate commerce, the improvement and utilization of water power development, and other beneficial public uses, including recreational purposes.

[3] Article 26 of the license provides, in part, to the effect that Licensee shall retain possession of all property covered by the license including the project area, project works, and all franchises, easements, water rights and rights of occupancy and use, unless voluntary disposition thereof be approved by the Commission (Opinion No. 305, issued September 4, 1957), and Form L–6 of December 15, 1953, at 16 FPC 1121, 1126; 18 FPC at 270.

[4] The recitals of Commission's Order Fixing Hearing refer to applications filed February 14, 17 and 25, 1964, of which the latter, as noted in the hearing (T. 3) is an obvious typographical error in that it relates in fact to the application filed June 29, 1964.

[5] See Exh. B of the application to the Commission filed February 17, 1964.

As required by the granting of record of Staff's oral motion therefor, Alabama Property Company, Fraim, Goodgame, McCaig and Whitten have, since the hearing, submitted detailed causeway plans and bridge designs to Licensee which have been duly filed as supplements to the latter's several applications herein, with the latter's accompanying comment indicating its several approvals with respect thereto, on the assumption of a further approval by the Engineer of St. Clair County, Alabama, of final roadway width and side slope specifications applicable to Goodgame and Whitten causeways (Item M); and as permitted by a related ruling of the Presiding Examiner, opposing interveners have since filed counterproposals to require construction of additional bridges to permit one way passages, and to require certain greater clearances for sailboat traffic through these latter causeways (Exh. 41).

---

[6] Allen, Causeway No. 1; Fraim, Causeway No. 2; Funderburg, Causeway No. 3; Goodgame, Causeway No. 4; Whitten, Causeways Nos. 5, 6 and 7; Powell, Causeways Nos. 8, 9 and 10; and Walker, Causeway No. 11.

[7] This letter was addressed to the Chairman of the St. Clair County Commissioner's Court who had given notice of application on behalf of the seven individuals.

[8] Causeway No. 4.

[9] Causeways Nos. 5, 6 and 7.

[10] McCaig, Causeway No. 21.

[11] Allen, Causeway No. 1; Funderburg, Causeway No. 3; Powell; Causeways Nos. 8, 9 and 10.

[12] Walker, No. 11, successor to N. D. Pless, with respect to which notice was given the Commission by letter dated March 13, 1964, and further consideration abated.

[13] Fraim, Canseway No. 2.

[14] Filed February 14, 1964, and February 17, 1964, respectively.

[15] On appropriate applications subsequently filed formal intervention was granted by Commission's order issued November 4, 1964. One of the individual property owners who entered an informal statement at the hearing in opposition to the causeways did not seek formal intervention, while three others who did not participate obtained intervention.

Thereafter, Staff filed its brief, interveners their several statements in lieu of briefs, and Licensee its reply to Staff's brief.

Fifty exhibits and fifteen items, including the three parts of Item M, were received in evidence.

In all fourteen witnesses testified, including the Chairman and three members of the Court of County Commissioners of St. Clair County, Alabama, and eleven individuals representing local property interests were permitted to make informal statements as to their opposition or approval.[19]

THE ISSUES

The issues presented in regard to the authorization of causeways over lands with respect to which Licensee has acquired fee or easement, involve: (a) whether implementation of the license and the beneficial public use provisions of Section 10(a) of the Act, with particular regard to that for recreation, justifies the granting of these applications and Licensee's yielding possession of certain easements and rights of occupancy in regard to such uses and purposes, and (b) whether, and to what extent, approvals of causeways should be conditioned to require owners to provide bridges and other facilities for public use and recreational purposes.

THE CONTENTIONS

Article 26 of the license requires, in pertinent part, that Licensee retain possession of project property, franchises, easements, water rights, and rights of occupancy and use related to the project, and that none necessary or useful to the project and to the development of power shall be voluntarily sold, transferred, abandoned or otherwise disposed of, without the approval of the Commission. It is the position of Licensee that, while the existence of causeways and fills which embrace any part of the project lands or rights is unauthorized until approved by the Commission, in the interest of attaining full public utilization of project waters for recreation, it does not object to the presence of causeways or similar works having no appreciable effect upon the operation of the dam and reservoir, provided that: a payment be made which can be applied against an appropriate part of project cost; Licensee be protected against any potential liability in regard to such causeways; design and construction thereof shall be acceptable to County authority having jurisdiction and the Commission; and conflicts of interest with adjoining property owners be resolved to the satisfaction of the Commission.

Licensee also proposes that as to causeways to be authorized, which will in fact become dedicated and accepted by the county as public roads, it be permitted to grant an appropriate easement to the county, and relieve the landowner from having to indemnify Licensee for injuries or damages to the causeway or to persons using the same.

Counsel for the causeway proponents, herein, filed their respective statements in lieu of briefs to the effect that no question exists as to the Commission's jurisdiction in the premises and all relevant facts have been already presented of record.

Counsel for opposing interveners, having first filed a similar statement in lieu of brief, in counter proposals (Exh. 41) to plans and bridge designs filed as supplements to Licensee's applications (Items M -Goodgame, -McCaig, and -Whitten), recommend that provision be made for one-way boat traffic by the construction of two bridges in Causeway No. 4 (Goodgame) and two each in Causeways Nos. 6 and 7 (Whitten), with a finished grade elevation sufficient to provide access by small sailboat (485.5 feet).

---

[19] Not including one in opposition who later testified.

Staff contends that it is consistent with the public interest to authorize Licensee to permit use of project lands and easements for the immediately pending causeways and land fills provided Licensee: reserve a right to future use of lands and easements as may be required for the safe and efficient maintenance and operation of the project; secure agreements that causeway owners, successors and assigns, will maintain, repair, alter or remove the causeways as required by the public convenience, health or safety, and will release and indemnify Licensee from any liability therefor, and reimburse Licensee for expenditures made in connection therewith; and receive appropriate compensation for the occupation of such lands and easements.

Staff further contends that the record provides no basis for a requirement that six sailing bridges be installed as proposed by interveners, and that, accordingly, causeways, bridges and land fills should be approved as proposed in Licensee's applications herein, as amended by Item M.

THE EVIDENCE

The Reservoir, Lands, Rights, and General Causeway Construction

Logan Martin dam and reservoir, licensed by the Commission as a part of Project No. 2146, is located on the Coosa River (River) basically in the area of Pell City and Riverside, Alabama. Stretching at full pool from river mile 99.5, at the dam, to river mile 148, upstream, the reservoir embraces some 18,000 acres, and several hundred miles of shoreline. It is one of six built, or under construction, which will provide a series of lakes on the River to extend from the vicinity of Wetumpka, Alabama, upstream to the vicinity of Rome, Georgia, and, being in particular proximity to metropolitan Birmingham, gives early evidence of possessing a major potential with respect to future recreational use.[17]

Filling of the reservoir, which commenced in the spring or summer of 1964 had, as of the date of hearing herein, reached, and was being temporarily held, at an approximate elevation of 461 feet, but it is intended that, subject to power requirements[18] and the incidence of rain and floods, elevation during the principal period of recreation (May to September) will normally vary between 464.5 feet and 465 feet.[19]

In general, for pool requirements, Licensee acquired land in fee to an elevation of 465 feet at the dam and 473 feet in the upper reaches of the reservoir;[20] and, for flood storage above pool level, acquired flood easements to an elevation of 473.4 feet near the dam and 490 feet upstream. While Licensee's form then in general use provided for the acquisition of lands to be surrounded by water, in instances of settlements with Licensee, certain fee owners, nevertheless, formally elected to retain lands to become islands and take severance damages in regard thereto. In consequence, certain causeways were then, or have been since, constructed, or partially constructed, and in connection with applications filed pertaining thereto[21] the Commission has approved a land fill at Pine

---

[17] Licensee is presently making an over-all study of future recreational use of the reservoir.

[18] The power plant consists of three 57,000 hp turbines connected to three 42,750 kw generators.

[19] However, again subject to the incidence of rains and floods, the pool will operate during the winter at a lower level of 460 feet.

[20] Allowing for hydraulic gradient.

[21] Including in this proceeding: Alabama Power Co., Nos. 23A and 23B, causeways: Fraim, No. 2, land fill; Goodgame, No. 4, causeway; McCaig, No. 21, causeway and land fill; and Whitten, Nos. 5, 6 and 7, causeways.

Harbor Marina and breakwater at Willingham's dock. Of the remainder, three are yet pending with Licensee,[22] seven have been effectively withdrawn or abandoned,[23] and eleven others have been permitted because located adjacent to but not on project property, or constructed prior to acquisition, or reserved as a part of the settlement.[24]

Matters Pertaining to Principal Causeways

Causeways Nos. 5, 6 and 7 (Whitten)[25]*—Location*

Causeways Nos. 5, 6 and 7 are located in the lower reaches of the reservoir, in St. Clair County, Alabama, where Licensee acquired land in fee to a normal pool elevation of 465 feet and additional flood easements to elevation 473.5 feet,[26] and are intended to connect and provide access, successively, to three islands. Except for the installation of bridges these causeways would form a continuous arm of land across a major portion of the flooded outlet of Rabbit Branch and confine passage substantially to one deep channel near the far shore, some 475 feet in width,[27] supplemented at times by another shallower channel in the same area some 257 feet wide.[28]

Without these causeways, there would be at the site of No. 6, two channels three feet or more in depth of respective widths of 282 feet and 403 feet; and, on the site of No. 7, two of 150 feet and 300 feet width, respectively. However, neither causeway lies in any part of the original channel of Rabbit Branch which, before flooding, was a stream usually but one-half to two feet deep in wet weather and 6 to 8 feet wide, and in summer dry.

Licensee's Acquisition of Whitten Property and Related Matters

By taking in fee to elevation of 465 feet Licensee acquired some 400 acres of a 450 acre river-front farm which Whitten had previously owned over a period of years. Including portions subject to flood easement, Islands Nos. 5, 6 and 7 embrace some 18 acres[29] of the 50 acres of the farm which remained after Licensee's acquisition.[30]

Originally access to the Whitten tract, and specifically to what are now Islands Nos. 5 and 6, was by either of two county roads known as the Roe and Vincent Roads, respectively, the flooding of which leaves no other feasible means of access to the islands by vehicle than by causeways.

Settlement between Licensee and Whitten with respect to the acquisition occurred by deed dated October 12, 1962. This instrument, representing the only written agreement between Whitten and Licensee, makes no mention of the reservation of a way, but, nevertheless, either at the time of settlement or shortly thereafter, Whitten advised Licensee's local representative of an intent to construct Causeways Nos. 5, 6 and 7, and, apparently without immediate objection thereto, proceeded so to do.[31] There is no proof that Whitten thereby intended to obtain permission to construct the causeways or that any of Licensee's local employees, including its supervisor in charge of the field office acquiring the land, had any authority to grant it.

---

[22] Cline, No. 22, a small partially completed causeway; Ranch Marina, a minor general reshaping of the shore line; and Riddle, No. 19, a small causeway.

[23] Allen, No. 1; Funderburg, No. 3; Powell, Nos. 8, 9 and 10; Stewart, No. 18; and Waite, No. 12; none of whom have completed an application in form appropriate for submission to the Commission or indicated any current interest in doing so.

[24] Borden, No. 27; Davis, No. 13; Lankford, No. 26; Lipsey (no number); Merrill, No. 16; Roberson, No. 20; Roe, No. 25; Treadwell, *et al.*, No. 17; Wadsworth, *et al.*, Nos. 14 and 15; and Walker (Treasure Island), No. 11; with respect to which no opposition had been expressed as to any one.

[25] Licensee's request for approval of these causeways was submitted and filed with the Commission on February 14, 1964, and supplemented by further data submitted by letter of even date.

[26] Elevations are heights above mean sea level.

[27] At normal pool elevation of 465 feet, from five to ten feet deep near shore sloping steeply toward midstream and a depth of 35 feet or more.

[28] This latter channel would be impassable at normal winter pool elevation of 460 feet.

[29] Above normal pool level of 465 feet, Island No. 5 embraces some 5 acres, Island No. 6 some 9 to 10 acres, and Island No. 7, sold in gross in 1964, some 3½ more acres.

[30] Including some 22 acres subject to easement between elevation 465 feet to elevation 473.5 feet.

Thereafter, in February 1963, with causeway construction well under way, a complaint was made to Licensee with respect to such construction and Whitten was given notice to discontinue. On the latter further proceeding, in October 1963, to effect a fill at the intersection ashore of Causeway No. 5 and Vincent Road, Licensee obtained an injunction in the Circuit Court of St. Clair County on November 8, 1963, which stayed all further construction on the causeways.

As of February 1963, with causeways partly level,[32] Whitten had invested approximately $10,000 therein, with another $8,000 or so required for completion to the proposed elevation of 474.5 feet, and with a bridge in Causeway No. 6.[33]

Present Status and Intended Use of Islands and Causeways

Of the six lots originally owned by Whitten on Island No. 5, one was sold in October 1963, two in November of that year, and three in April 1964. The two sold in November were purchased as a recreation area for the use of employees of a local telephone company. The others are intended, apparently, for private residential purposes. The recreation area presently represents an investment of some $20,700 in land, clearing, beach grading, drilling of a well, and installation of an electric pump. In addition, the employees have been engaged in cooperatively installing dock and piers, a float, and picnic facilities.

Other than for the making of a dirt road and the availability of electric service Island No. 6 remains undeveloped, but is capable of subdivision into approximately 18 residential building sites or lots. Island No. 7, which was sold in gross in the fall of 1963, for private residential use, has only a drilled well and electric pump, boat docks, and a launching ramp.

Whitten intends to dedicate the island causeways as public roads and in his discussions with the Chairman of the Court of County Commissioners it has been indicated to him that when as many as two or three permanent island residents are established the dedication will be accepted.

Specifications and Reservoir Occupancy

The causeways originally would have had a top width of 15 feet, rip-rap on 2.5:1 side slopes, 90 percent machine compaction, and a finished elevation of 474.5 feet, or one foot above flood easement, but, by later specifications approved by the County Engineer for St. Clair County, Whitten now undertakes to provide causeways with finished grade of 476.5 feet, rip-rap protection to 475.5 feet, together with a bridge in No. 6 for boat passage and water outlet, of a single 34 foot span built according to State highway department standards, with a reinforced deck girder, steel piling, concrete abutments, rip-rap protection where necessary, and finished grade of 476.5 feet. Licensee reasonably assumes that, as the County Engineer has required 2:1 side slopes and a maximum road width of 20 feet in the instance of other causeways or land fills, the immediate causeways will be approved herein with the same slope and road width.

---

[31] In October or November 1962.

[32] Each was then of full length: No. 5 approximately 475 feet, No. 6 approximately 1910 feet, and No. 7 approximately 825 feet.

[33] Whitten first proposed to locate a bridge in deep water at the center of Causeway No. 6 which would have had a horizontal clearance of 18 feet, width of 15 feet, abutments of reinforced concrete or creosoted pine piling, 6x16-inch pine stringers, and 3x10-inch hardwood flooring, of a type familiar on county back roads and capable of bearing the heaviest equipment to be used in connection with future construction on the islands.

Causeway No. 5, except for a small portion of one side located in very shallow water (6 inches), lies almost entirely in the flood easement, while No. 6 is located on both pool land (1.5 acres) and flood easement (0.6 acres), and No. 7 lies principally on pool land (0.7 acres) and partly on flood easement (0.1 acres).

Licensee's Report of Effects of Causeways Nos. 5, 6 and 7

According to Licensee, Causeway No. 5 will have no effect upon the operation of the reservoir, or upon boating, and will present no particular problem as to mosquito control or driftwood collection. Causeways Nos. 6 and 7, except for a bridge, would confine all outlet from Rabbit Branch to the two channels previously mentioned[34] and have some effect upon both boating in the area and also the view from certain property sites. With a bridge in Causeway No. 6 the effect upon boating would be partially alleviated and there would be no appreciable problem as to mosquito control. Problems concerned with the collection of driftwood would require some time to evaluate.

These causeways would have no significant hydrological effects on flood levels in Rabbit Branch, flows through the channel, or reservoir operations.

Causeway No. 4 (Goodgame)[35]—Location

Causeway No. 4 lies in Rabbit Branch outlet on the lower reaches of the reservoir,[36] approximately three-quarters of a mile upstream from the above considered Whitten's Causeways Nos. 5, 6 and 7, in the same area where Licensee acquired land in fee to normal pool elevation of 465 feet, and above for flood easement to 473.5 feet. It extends some 1275 feet southeastwardly from the mainland to provide access to Island No. 4 (Coosa Island) also located in the outlet of Rabbit Branch. Except for a proposed bridge the causeway and island would form a continuous land arm across the outlet and confine flows and boat traffic to a single channel some 375 feet wide between Island No. 4 and the northeast bank of the Branch. The causeway does not extend into the original channel of Rabbit Branch.

Acquisition of Goodgame Property and Related Matters

Licensee acquired what is now the Goodgame property from one Williamson and wife on March 7, 1961, for a certain consideration, applicable in part to the fee and in part to the easement, which was accepted in full compensation for all consequences attendant upon the construction and operation of the reservoir. Thereafter, on October 30, 1962, before filling of the reservoir had commenced, Goodgame acquired the island from the Williamsons.

Prior to flooding access to the tract had been by county gravel road, principally Roe Road which led from U.S. Highway 231 southerly for about one and a half miles, where it crossed the present causeway location within approximately 400 feet or less of what is now the island, after which it passed off to the west. The Vincent Road also came within approximately the same distance to afford an access to the tract from an easterly direction. It was testified at the hearing, and not disputed, that as in the case of the preceding Whitten property, Licensee allowed the predecessor to Goodgame's title certain unspecified severance damages with respect to that part of the land which is now Coosa Island, without provision for a causeway.[37]

---

[34] *I.e.,* the deep 475 foot wide channel between Island No. 7 and Waite's Island and the shallower 257 foot channel between Waite's Island and the mainland.

[35] Licensee's request for approval was filed with the Commission February 17, 1964, and was supplemented, as to matters concerning a bridge, by a second letter dated July 18, 1964.

[36] St. Clair County, Alabama.

The Court of County Commissioners of St. Clair County, which is charged with the duty of supervising the building and maintenance of County public roads, sought at the time of the initiation of Licensee's land acquisition program, to have Licensee replace roads which would be flooded. However, in the final settlement the County finally agreed to accept a round sum and to undertake the relocation and raising of roads required by public use. In the determination of the round sum the County Engineer, the County Commissioner in the road district affected,[38] and Licensee's senior engineer of hydraulic planning, first viewed each road to determine which should be raised or relocated, and which eliminated because leading only to unoccupied property, following which the County Commissioners as the Court made an official determination in the premises. While the Roe Road in the vicinity of Island No. 4 was eliminated from consideration because of the absence of dwellings in the area which would bear occupancy,[39] it had been understood, in effect, that the County could relocate or build up any road in the reservoir area and obtain the soil necessary therefor from the reservoir.[40]

Goodgame, apparently first sought to raise the Roe Road above pool level, but meeting with an objection from his predecessor in title, and because of matters related to natural drainage and depth of water, the County Commissioners suggested the construction of a causeway at the present site. Accordingly, in the summer of 1963, Goodgame obtained what purported to be a permit from the Commissioners for such construction on condition that the causeway become a public road. However, the former, for some undisclosed reason, entered into correspondence with Licensee concerning the proposed causeway, and in the course thereof was advised that construction could not proceed at that time. Nevertheless, acting upon such authority as had been obtained from the County Commissioners, he proceeded with construction, and thereafter, upon complaint filed November 7, 1963, in the Circuit Court of St. Clair County, Licensee obtained a temporary restraining order and Goodgame desisted.

With this turn of events a continuation of the construction was authorized by the County Commissioners and undertaken as a road district activity which proceeded until restrained by Order of the Circuit Court, issued December 6, 1963, upon Licensee's complaint against the Commissioner in the district. Thereafter, on discovery of further work in progress,[41] Licensee obtained court authorization to barricade the causeway, and, with placement of a barrier of telephone poles for this purpose, the island became accessible only by barge and boat.

Subsequently, a proceeding to condemn the causeway as a public road[42] was authorized by the Court of County Commissioners and duly filed on August 5,

---

[37] While Licensee's witness testified that the appraisal provided some additional amount as severance damages to take care of the loss of value of the cut-off lands, neither the Whitten nor Williamson deed directly or indirectly refers to such a sum or category of damages.

[38] Each Commissioner member of the Court of County Commissioners is assigned individual responsibility for the supervision and maintenance of roads in a designated district.

[39] The house last standing on Coosa Island was removed some 8 to 10 years ago, but access thereto had been had from both the Roe and Vincent Roads.

[40] The Roe Road has been raised at a point about one mile north of Coosa Island, and others have been either relocated around water or raised without objection; but the County has not constructed any roadways in the reservoir area similar to the Whitten or Goodgame causeways.

[41] June 17 and July 13, 1964.

[42] A step taken with Goodgame's agreement.

1964, in the Probate Court of St. Clair County, which, since removal, now pends in the local Federal District Court.

As of the time of the first injunction construction had commenced on at least three houses and continued thereafter with materials transported by water.

Present Status and Intended Use of Island

Goodgame has completed seven houses and cottages on the Island and has seven under construction. He has also installed there a large boat crane, and boat ramps. A marina is two-thirds completed. In addition to a year-round house he plans to have in all some 32 cottages,[43] docks for 36 boats, a motel of 15 units, the marina, a restaurant of rather substantial size, a beach with bath houses, a playground, and sanitary facilities, all available for public use.[44]

Present construction and improvements on the 17 acres included in the island[45] represent an investment of approximately $163,000, with approximately $90,000 more estimated to be required for completion as planned.

Goodgame expresses an intent to dedicate to the county the causeway and island roads and, as required, an interest which he asserts in the use of a 30 foot right-of-way in a road leading into the area, and it appears that with the completion of the causeway the County Commissioners desire and will accept a dedication which includes the causeway.

Specifications and Reservoir Occupancy

The causeway, as originally proposed, would have had a top width of 11 feet, rip-rapped side slopes of 1.5:1 maximum, 90 percent machine compaction, and a top elevation of 475 feet, or one and a half feet above flood elevation, with a bridge of such design as would be approved by the St. Clair County Engineer or be otherwise required. However, by later, superseding specifications approved by the County Engineer for St. Clair County, Goodgame now proposes to construct a causeway with finish grade of 476.5 feet, rip-rap protection to 475.5 feet, together with a bridge for boat passage and water outlet, of a single 34 foot span built according to State Highway Department standards, with a reinforced deck girder, steel piling, concrete abutments, rip-rap protection where necessary, and finish grade of 476.5 feet; and, in this connection as in the instance of the preceding Whitten proposal, Licensee reasonably assumes that, as the County Engineer has required 2:1 side slopes and a minimum road width of 20 feet in the instance of other causeways and land fills, the immediate causeway will be approved herein with the latter slope and road width.

The causeway will lie partly on pool lands (0.8 acres) and partly in the flood easement (1.1 acres).

Licensee's Report of Effects of Causeway No. 4

According to the Licensee, Causeway No. 4 will have not appreciable effect upon reservior operation, will present no particular problem as to mosquito control, and but a minor effect, if any, with respect to driftwood collection; but, substantially confining Rabbit Branch outlet to a channel estimated to be some 375 feet wide at normal pool level of 465 feet, it would, except for a bridge, necessarily have some effect upon boating.

---

[43] With duplexes, a total of forty units, each containing two bedrooms.

[44] Construction is at elevation 475 feet and above. Sanitation facilities have been inspected and approved by the sanitation officer of the County on behalf of both the County and the State.

[45] Above normal pool level, including that embraced in the flood easement.

The causeway would have no significant hydrological effects on flood levels in Rabbit Branch or flows through the channel.[46]

Objections to Causeways

Causeways of the character of the foregoing (Nos. 4 and 5, 6, and 7) have both adverse and beneficial effects with respect to the use of water area and adjoining lands, and, depending upon local conditions, with or without bridges, would: impair the recreational use of the former by limiting the passage of boats, create a problem of mosquito control and, by merely extending the shoreline, create one of debris collection; and, also restrict the across-water view from land sites and water areas. However, this list of negative possibilities is paralleled by one of at least equally extensive possible benefits, for a causeway, as a breakwater may well be useful in preventing bank erosion, affording protection to boats, and in providing a safe resting place for water fowl, new fish habitats and fishing areas, and access to public and private recreation and dwelling areas.

In the immediate matters it is objected that the Whitten causeways (Nos. 5, 6 and 7) constitute a barricade[47] to the main body of the reservoir,[48] create a hazard to boating, and obstruct the view over a broad expanse of water,[49] including a view over the open lake some two miles downstream to the dam. It is also specifically objected that the Goodgame causeway (No. 4) will limit boat traffic to a single channel,[50] and support a relatively comprehensive commercial development of Island No. 4.[51] However, some ten other property owners, once opposed to the Whitten causeways, now withdraw their opposition.

On the other hand five county officials,[52] the president of the local Chamber of Commerce,[53] an owner of an upstream tract in the vicinity,[54] and several owners of individual lots,[55] either tendered statements or testified in favor of the causeways, in some instances upon an assurance that a bridge would be provided for passage by water. Those approving do so on the basis of assertions as to beneficial breakwater effects, the relatively minor nature of inconvenience imposed, and the contribution that access may make possible in the over-all development of the area to its full potential.

---

[46] With a drainage area embracing about ten square miles and a 50-year run-off of some 3,000–4,000 cubic feet per second, the area of restriction would result in a flow velocity at the end of the causeway of but some 0.2 feet per second (12 feet per minute) and an equally negligible loss of head.

[47] By a lot owner across Rabbit Branch and below Causeway No. 4 (Goodgame) who neither sails nor owns a boat; and by an officer and one of 15 members of a group venture and club type 35-acre development as Clearwater Point Estates, Inc., of which but one member owns a sailboat. Development of the latter tract and sale of lots commenced only after the Whitten causeways were up.

[48] By the owner of a lot located on the mainland below Causeway No. 4 and above Whitten's No. 5, speaking for himself and possibly owners of several other lots.

[49] By one of three original joint purchasers of acreage on so-called Doctor's Point across Rabbit Branch from Island No. 4 who is interested in sailing though not presently owning a boat.

[50] By the protestants of the two immediately preceding footnotes.

[51] By the protestants of the three preceding footnotes, one of whom owns under a deed dated about September 1962 which is asserted to carry residential type restrictions. The area is not subject to zoning ordinance restrictions.

[52] Including the Circuit Judge of Calhoun and St. Clair Counties who had earlier tried the injunction proceedings against these causeways, the sanitation officer of St. Clair County (Causeway No. 4), the Chairman of the Court of County Commissioners of St. Clair County, and tacitly or otherwise, two of the Commissioners.

[53] Pell City, St. Clair County, Alabama.

[54] Of some 62 acres on Rabbit Branch above Island No. 4.

[55] Including: an owner of one of a number of lots in a subdivision on the mainland between Causeways Nos. 4 and 5; an owner of a lot one-half mile up Rabbit Branch from Island No. 4, and a boatsman; an owner of a lot across Rabbit Branch from Island No. 4 (Goodgame's only); statement of no objection by an officer and one of 15 members of a group venture and club type 35-acre development known as Clearwater Point Estates, Inc. (Goodgame's only); and an owner representing 9 lots on the mainland in proximity to Causeway No. 4, on condition that bridges be installed. A number of others whose names are signed on a petition headed "Landowners Petition" but who are not all landowners may be taken also as favoring the authorization of the Whitten and Goodgame causeways (Exh. 31).

Staff's witness, serving as a consultant to the Commission in the field of licensing procedures for recreation, fish and wildlife, and experienced in the field of management of fisheries and wildlife from a recreational point of view, testified to a number of factors concerned, of which, and on balance, those favorable are clearly predominant.

Objections and Benefits Compared

Rabbit Branch contains about 575 acres of reservoir area and has approximately eight and a half miles of shoreline upon which there is a substantial amount of property either subdivided or available for subdivision.[56] Presently, there are but some nine houses under construction or completed above the causeways, but the general speculation and opinion of those testifying was that as many as 250 to 1,000 homes, cabins and camp sites would develop in that area with the possibility of traffic by a roughly corresponding number of boats. Even under present conditions of relative underdevelopment many boats and a number of water skiers already use the water above and adjoining the causeways.

Causeway No. 4 and Causeways Nos. 6 and 7 admittedly do impair in certain respects the recreational uses of a substantial water area, the degree of which depends upon the question of bridges.

Opponent interveners, though accepting the bridge plans of the Alabama Highway Department submitted on behalf of Whitten and Goodgame, recommend a provision for one-way boat traffic through each causeway by the construction of two such bridges in each (Nos. 4, 6 and 7); and, to provide for small sailboat access, that the causeway bridge have a finished grade of 485.5 feet, approximately 20 feet above normal pool elevation, as compared with the 476.5 feet proposed (Item M).

The apparent height of the masts of boats which sail upon the reservoir vary, from approximately ten or twelve feet for the smaller size to some 30 or 35 feet for the larger.[57] Thus, while the clearance proposed on behalf of Whitten and Goodgame, of approximately nine to ten feet at normal pool level (465 feet), would be inadequate to pass anything but the lower masts, it would, nevertheless, serve to pass motorboats and so reduce the traffic in the channels by Coosa Island and Island No. 7 and substantially facilitate the navigation of sailboats through those places. The testimony satisfactorily establishes, on balance, that, in exercise of ordinary precaution and observation of rules of the road, qualified operators of both motor and sailboats, could navigate the passages at Coosa Island and Island No. 7 in safety, even though the latter is not a simple point passage and may involve a run and a turn.[58]

The evidence will not support a finding that a so-called "sailing bridge" as proposed by interveners would be a reasonable or appropriate burden to place upon the owners of these islands. Indeed, the opposing interveners, resting entirely upon the matter of convenience, took no occasion in the hearing to address themselves to that specific point.

Interveners rights are not those of persons situated on a wholly natural body of water, and, in the absence of local ordinance or special identification with the beneficial public use thereof, are not inherently superior to like claims of others. In this light, and the absence of other persuasive considerations, Whitten and Goodgame have as much claim to the reasonable and lawful use and development of their property as others, even though the uses are not the same.

---

[56] Above the Whitten causeways; above Causeway No. 4: 335 acres and 7.4 miles of shoreline.

[57] The larger sailboats operate upon the open reservoir, out of the Birmingham Sailing Club located down river from Rabbit Branch.

[58] On these waters, as others, sailboats have the right of way over motorboat traffic.

The record is materially deficient in evidence that would justify and require a finding that use of Rabbit Branch requires bridges in each causeway that would provide for a stream of one way traffic in double passages or a finding that for its probable use the channel between Island No. 7 and the mainland is unreasonably small, as compared with passage available above Causeway No. 4; or a finding that the route by channel in Rabbit Branch from points above Causeway No. 4 to open water would be significantly longer or more inconvenient than access thereto through the waters which would be occupied by the causeways (Exh. 2).

In these circumstances it is found and concluded that single bridges in Causeways Nos. 4 and 6, of span proposed in Item M herein, will be sufficient to provide the public with reasonable passage through the causeways as a supplement to that of the main channel of Rabbit Branch, and that the requirement of additional bridges in Causeways Nos. 4, 6 and 7 would impose an unreasonable and undue burden upon these causeway owners.

It is evident that Causeways Nos. 4, 5, 6 and 7, with the two bridges will create no significant or particular problem with respect to vector control or the collection of driftwood and debris.

Although Staff witness testified that Causeways Nos. 6 and 7 will restrict the view across Rabbit Branch, from Doctor's Point downstream to the vicinity of Clearwater Point Estates, it was also testified that the nearest of these causeways is nearly a half mile distant from the nearest point at the latter location and would present no objectionable obstruction to view from either building site or pier level. Indeed, the only objection consistently entered on behalf of those situated in the vicinity of Clearwater Estates was to the obstruction of access to water.

As to the obstruction of view from Doctor's Point by Goodgame's Causeway No. 4, Staff witness testified from an on-site observation to the effect, and without contradiction, that compared with the obstruction to view effected by the Island that of the causeway was minor and incidental. It is found, therefore, that Causeway No. 4 does not create a substantial additional obstruction to the view from the complaining area.

The evidence is that wind blowing over water on reaches as long as those to the east and south of Rabbit Branch can cause waves as high as two or three feet. Causeways Nos. 6 and 7, and to a somewhat less extent interior Causeway No. 4, could thus provide a breakwater against waves of substantial height and afford material protection to boats, docks and other property. They would provide, in addition, new fish habitats and spawning areas, and, if open to the public by dedication as proposed, access by land to considerable new fishing areas.

Causeway No. 4 would also provide access to what is, as now planned, the largest developed recreational area on the reservoir which will be available to the public.

It is found and concluded that these causeways (Nos. 4, 5, 6 and 7) and required bridges would make a significant contribution to the beneficial public use of the reservoir.

Other Causeways and Fills

McCaig (No. 21)[59]

In this matter permission is sought to place fill and raise a small island of approximately 2.8 acres, located some 22 miles above the dam, in the flood easement, and to construct a causeway some 1,600 feet long to connect the island to the mainland.

Some 75 feet of the causeway would lie in a very shallow portion of the power pool, the remainder in the flood easement.

The causeway would have a top elevation of 478 feet,[60] a top width of 20 feet, 2:1 side slopes, rip-rap to elevation 468 feet with grass above, and would be machine compacted.[61]

Construction on the causeway was started in November or December 1963, approximately at the time Licensee began clearing land for the reservoir, but has been halted due to a restraining order obtained by Licensee May 21, 1964, in the Circuit Court of Talladega County, Alabama. Licensee's condemnation proceeding against the property of which the island is a part is still pending and the valuation thereof has not yet been determined.

Licensee reports that the proposed construction appears to be in keeping with the practices of Talladega County in its road construction and relocation program in the reservoir area, it does not appear that there will be any resulting appreciable effect on boat traffic, reservoir operations, mosquito control, or driftwood accumulation, and there has been no indication of public opposition.

Licensee seeks authorization to grant the permission sought to construct the causeway and fill, subject to certain specified conditions including a waiver by McCraig in the Licensee's pending condemnation proceeding if any claim for severance damages and compensation for land taken insofar as these relate to the island and causeway site, and the execution of a satisfactory release and indemnity agreement as to any future liability of Licensee with respect to the causeway and fill.

Under the foregoing circumstances, the causeway and land fill is considered as contributing to the public utilization of project water and adjacent land for recreational purposes.

The authorization sought is granted Licensee, as provided, and subject to the conditions stated, in the order included as a part of this decision.

The following, although not among the causeways specified in Commission's Order Fixing Hearing, issued herein August 10, 1964, are included by Licensee and Staff as among those to be disposed of in these proceedings, and are deemed to be subject to such disposal by the general language of the order, and of the notice which was duly published in two local area papers on August 6, 1964, which refers generally to the approval or exclusion of unauthorized causeways within the project area.

Alapaco Acres and Seddon Shores Subdivisions (Nos. 23-A and 23-B)[62]

Alabama Property Company (Property), a subsidiary of Licensee, is the owner of land lying in Talladega County, Alabama, on the east shore of the reservoir some four miles above the dam, which is known as Alapaco Acres Subdivision and is composed of subdivided lots sold or to be sold to the public. The subdivision has a road system dedicated or to be dedicated to the County which in one location crosses the upper end of a slough and occupies about 5,000 square feet in the flood easement. Property seeks permission to construct a causeway (No. 23-A) at the location indicated.

---

[59] Includes Charles R. Burgess and J. R. Moody as parties in interest. Licensee's application to the Commission for this construction was by letter filed June 29, 1964.

[60] In this area, Licensee acquired pool rights in fee to elevation 466 feet and flood rights to elevation 475 feet.

[61] Degree not specified.

[62] Licensee's application to the Commission in respect to these matters was by letter filed March 12, 1964.

Property also owns land on both sides of Fishing Creek on the west shore of the reservoir, 19 miles above the dam, near Riverside, Alabama, which is known as Seddon Shores Subdivision and is composed of subdivided lots sold or to be sold the public. This subdivision also has a road system dedicated or to be dedicated to the County, with respect to which three causeways (Nos. 23-B) would be required, to be located in the flood easement except for some 0.005 acres in the power pool.

In the instance of each subdivision causeways would be built on county roadways to usual county road specifications and be provided with proper drainage facilities.

None of the foregoing causeways would have any appreciable effect on reservoir operations or boat traffic at normal pool level, or would cause increased difficulties because of mosquito control or collection of driftwood and debris, and there has been no expression of public opposition.

The subdivisions are intended to promote public enjoyment and use of the reservoir and adjacent lands for recreation purposes and it appears that adjoining property owners and the public would be benefited by the construction proposed.

Licensee seeks authorization to grant the permission sought subject to certain specified conditions including, in brief, a condition that plans and specifications be based upon the usual road specifications utilized by the two counties in their respective road construction and relocation programs in the reservoir area, and roads and fills become dedicated as public roads in the several counties. In the circumstances stated, the authorization sought is granted Licensee, as provided, and subject to the conditions stated, in the order included as a part of this decision.

Fraim (No. 2)[63]

The proposed causeway, substantially completed, extends some 600 feet from the end of the Pine Harbor Marina land fill, previously authorized by the Commission, southwesterly to connect with an island owned by Fraim on which he has a residence. It would be located entirely in the flood easement.

The proposed causeway would have a finished elevation of 476.5 feet, or three feet above the flood easement,[64] a top width of 20 feet, 2:1 side slopes, heavy machine compaction,[65] with heavy rip-rap or grass sod.

Licensee reports to the effect that it does not appear that the causeway would have any appreciable effect on the operation of the reservoir, boat traffic, mosquito control, or driftwood and debris, collection, and there has been no indication of opposition from others.

Licensee seeks authorization to grant permission to construct the causeway, subject to certain specified conditions, including a waiver by Fraim in Licensee's pending condemnation proceeding of any claim for severance damages and easement compensation, insofar as these relate to the island and causeway site, and the execution of a satisfactory release and indemnity agreement as to any future liability of Licensee related to the causeway.

---

[63] Licensee's application to the Commission for this construction was by letter filed September 11, 1964.

[64] Which is consistent with the practices of St. Clair County in its road construction and relocation program in the reservoir area.

[65] Degree not specified.

The causeway contributes to the public utilization of project waters and adjacent land for recreational purposes. The authorization sought is granted Licensee, as provided, and subject to the conditions stated, in the order included as a part of this decision.

Riddle (No. 19) and Cline (No. 22)

The first of these causeways lies on the east side of the reservoir some 1.5 miles above the dam, the second in the upper reaches some 33.5 miles above the dam. The former, described in the evidence simply as a small causeway, and the latter as a small partially completed causeway across a slough, have been pending with the Licensee about a year or more with no indication of an imminent disposition. Staff proposes that, within 90 days of the date upon which the order herein shall become effective, Licensee either obtain the necessary data and agreements from the owners and submit the appropriate application, or secure removal thereof from the reservoir. As Licensee expresses no opposition the order will include a provision such as that proposed.

Public Interest

Upon the evidence of record, it is further found and concluded that the authorization herein granted Licensee to permit use of its project lands and properties for the causeways, bridges, and land fills hereinabove set forth will be consistent with the public interest in carrying out the provisions of the Act, subject to the conditions stated in the order included as a part of this decision.

ORDER

Upon consideration of the record herein, the contentions set forth in the briefs and proposed findings of counsel, and for the reasons and upon the findings and conclusions set forth in the foregoing portions of this decision, of which this Order is a part,

IT IS ORDERED, subject to review by the Commission on appeal, or on its own motion, as provided by its Rules of Practice and Procedure, that:

(A) Licensee may grant permission to use project lands and properties, for the causeways, bridges, and fills (collectively causeways) for which formal application has been made herein, *to-wit:* Fraim Causeway No. 2, Goodgame Causeway No. 4, Whitten Causeways Nos 5, 6 and 7, McCaig Causeway No. 21, and Alabama Property Company Causeways Nos. 23-A and 23-B, *provided* that:

(1) Licensee reserve for itself and its successors and assigns the right to use its project lands and properties as may be required to safely and efficiently operate and maintain the project for beneficial public uses, including recreational purposes;

(2) In the event a causeway is to be a private road, Licensee secure agreements that the causeway owners and their successors and assigns will maintain, repair, alter or remove the causeways as required by the public convenience, health or safety and will release and indemnify the Licensee from all liability respecting the causeways or their effects and will reimburse it for any expenditures made in connection therewith;

(3) In the event all other requirements (except paragraph A(2) above) of this order have been complied with and thereafter the causeway is dedicated as a public road and accepted as such by the appropriate county authority, Licensee is authorized to grant an easement to the county, upon its request, for a public road as to any portion of a causeway lying in the pool area and to join with the

appropriate landowner in granting an easement to the county for a public road as to any portion of a causeway lying in the flood easement;

(4) Licensee obtain payment or allowance from the owners, if such has not already been obtained, as just and fair compensation to it for the use of its project lands and properties by the causeways.

(B) The causeways, bridges, and land fills designated in Paragraph (A) hereof shall be built and maintained to the design specifications contained in the Licensee's applications as amended by the Licensee's filing of October 5, 1964 (Item M), and any additional specifications that may be set from time to time by the Commission upon its own motion, or upon recommendation by the Licensee, Corps of Engineers, or state and local authorities.

(C) Within ninety days after the date upon which this order shall become effective, the Licensee shall secure the removal from project lands and properties of causeways pending before it for which no applications have been filed, or for which applications are deemed to have been abandoned, unless the owner thereof enters into the agreements and makes the payment or allowance required under Paragraph (A) of this order.

EWING G. SIMPSON,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

AMERADA PETROLEUM CORP., ET AL., DOCKET NO. CI62-1544, ET AL.

ORDER DENYING PETITION FOR RECONSIDERATION

(Issued May 26, 1965)

On April 28, 1965, the Public Service Commission of the State of New York filed an application for reconsideration of our order issued on March 29, 1965, 33 FPC 643, in the above proceeding wherein we deferred further consideration of what refunds, if any, should be ordered where a producer is granted a temporary certificate without a refund condition to sell at a price later determined to be out of line in a decision on the permanent certificate. The basis for our deferral was that the validity and measure of our refunding power is in issue in *U.G.I., et al.* v. *Callery Properties*, S. Ct. Nos. 671, *et al.*, October Term 1964.

We adhere to our view that the issue as presented in this case should be deferred until guidance on the scope of our refunding powers is given by the Supreme Court in the *Callery* case. We will, therefore, deny the petition for reconsideration.

The Commission orders:

The Application for Reconsideration filed on April 29, 1965, in the above proceeding is hereby denied.

Commissioner Ross *dissenting.*

Ross, *Commissioner, dissenting:*

Upon reconsideration, I believe this matter should be set for immediate hearing consistent with the Court's remand in *P.S.C. of N.Y.* v. *F.P.C.*, 329 F. 2d 242.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

DUQUESNE LIGHT COMPANY, DOCKET NO. E-6939

ORDER TERMINATING PROCEEDING

(Issued May 26, 1965)

This proceeding was instituted by order to show cause directed to the Duquesne Light Company (Duquesne) issued on May 23, 1960, 21 FPC 717. That order directed Duquesne to show cause why it should not be found to be in violation of certain provisions of the Commission's Uniform System of Accounts relating to accounting and reporting of deferred taxes.

By letter dated March 27, 1965, counsel for Duquesne asserted that the Company is now fully complying with this Commission's accounting and reporting requirements relating to deferred income taxes and requested that the Commission terminate this proceeding. Commission staff examination of Duquesne's books of account and of its FPC Form No. 1 for the year 1964 indicate that Duquesne is now complying with this Commission's deferred tax accounting and reporting requirements.

The Commission finds:

It is necessary and appropriate for the purposes of the Federal Power Act and the Commission's Uniform System of Accounts that this proceeding be terminated.

The Commission orders:

The above-captioned proceeding is hereby terminated.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

MOOSE CREEK RANCH, INC., PROJECT NO. 2353

ORDER AMENDING LICENSE (MINOR)

(Issued May 26, 1965)

Application was filed on December 7, 1964 under Section 6 of the Federal Power Act (Act) by Moose Creek Ranch, Inc. (Applicant) for amendment of its license for minor Project No. 2353 located on North Fork of Moose Creek, Idaho County, Idaho.

The application seeks to replace Article 15 of the license with a new Article 15 recommended for inclusion in the license by the Department of the Interior in a letter to the Commission dated November 13, 1964. The substitute Article 15 provides for the alteration of the period of fishway operation, for modification of the project structure in the interest of fish passage, and for inclusion of the Idaho Department of Fish and Game and the Fish and Wildlife Service of the Department of the Interior as parties to regulation of fishway operation.

The license for the project waives Section 6 of the Act insofar as it relates to public notice.

The Commission finds:

The license for Project No. 2353, as amended herein, is in the public interest.

The Commission orders:

(A) Article 15 of the license for Project No. 2353 is hereby amended to read as follows:

Article 15. To ensure free fish migrations the Licensee shall maintain such flows at such times of the year through the Deniltype fishway constructed as part of the project as may be determined necessary by the Idaho Fish and Game Department, the United States Forest Service and the Fish and Wildlife Service, and shall make such reasonable modifications in project structure and operation in the interest of anadromous fish conservation as may be directed by the Commission upon the recommendation of the above named agencies, and after notice and opportunity for hearing.

(B) This amendment in the manner set out above shall not operate to alter or amend the license in any other respect, and shall not in any way constitute a waiver of any other part, provision or condition of the license.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgment of the acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

CITY OF NORWICH DEPARTMENT OF PUBLIC UTILITIES, PROJECT NO. 2441

ORDER CORRECTING LICENSE ORDER

(Issued May 26, 1965)

Through inadvertence, a line was omitted in paragraph (A) of the Commission's initial license order for Project No. 2441 issued April 15, 1965, 33 FPC 801 at 803. The omitted line reads as follows: "for a period effective April 1, 1962, and terminating December 31, 1993,"

The Commission orders:

(A) Paragraph (A) of the Commission's April 15, 1965 license order for Project No. 2441 is hereby corrected to read as follows:

(A) This license is hereby issued to City of Norwich Department of Public Utilities (Licensee), of Norwich, Connecticut, under Sections 4(e) and 10(i) of the Federal Power Act (Act) for a period effective April 1, 1962, and terminating December 31, 1993, for the continued operation and maintenance of the Greenville Hydro Plant Project No. 2441, located on the Shetucket River, a navigable water of the United States, in New London County, Connecticut, subject to the terms and conditions of the Act insofar as not expressly waived herein, which Act is incorporated herein by reference as a part of this license and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgment of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

VIRGINIA ELECTRIC & POWER COMPANY, PROJECT NO. 2463

ORDER ISSUING LICENSE (MAJOR)

(Issued May 26, 1965)*

Application was filed on April 20, 1964, by Virginia Electric & Power Company (Applicant) of Richmond, Virginia, for a license under Section 4(e) of the Federal Power Act (Act) for constructed Project No. 2463, known as the Park Hydroelectric Project, located on the lower end of the Chesapeake and Ohio Canal paralleling the James River, a navigable water of the United States[1] within the City of Richmond, Virginia. The project utilizes water from the canal, which diverts water from the James River at a point upstream from the subject project and then returns the water to the James River just downstream from the project. The project does not affect lands of the United States.

According to the application, construction of the project was commenced by Applicant in May 1939, was completed in August 1940, and started operating in February of the same year. No changes have been made in the project since the initial construction.

The Secretary of the Army and the Chief of Engineers have advised that the plans of the project structures affecting navigation are satisfactory insofar as the interests of navigation are concerned and that the project plans have been approved pursuant to Section 4(e) of the Act. The Corps of Engineers pointed out that the Belle Isle site (located 0.1 mile upstream from Project No. 2463) had been proposed for redevelopment in the Corps' comprehensive plan for development of the James River Basin[2] which proposed the construction, sometime in the future, of a 60 foot high dam, the excavation of a tailrace, and the installation of 24,000 kw of generating capacity. In view of the latter proposal, the Corps recommended for inclusion in any license for the subject project a condition to protect the authorized functions of any future development in the James River Basin under the Corps' jurisdiction. The Corps also recommended for inclusion in any license for the project, the terms and conditions in the interest of navigation contained in Form L-3 (Revised August 1, 1964) (32 FPC 1114), which is incorporated herein and made a part hereof.

The Department of the Interior, in reporting on the Application, referred to the aforementioned 1945 Corps of Engineers' comprehensive plan for development of the James River Basin and to the relation of the subject project to such plan. The Department pointed out that the project has little effect on fish and wildlife and offers no opportunity for conservation and development of such resources, and made no recommendation that any license for the project should include the terms and conditions in the interests of fish and wildlife and recreation contained in Form L-3.

The Department of Health, Education, and Welfare has advised that while a sewer owned by the City of Richmond discharges into the tailrace of the subject project, plans are underway between Applicant and the City for discontinuation of the sewer and interception of the flow therefrom which should eliminate any water quality problem in the project tailrace. Construction to intercept the flow is scheduled to begin late this year.

---

*See order issued July 16, 1965 granting rehearing for further consideration.

[1] In our order issued August 12, 1964. 32 FPC 591, Appalachian Power Company, Project No. 2376, we found that the James River from its mouth at Newport News at least to its confluence with Jackson's River at about mile 340 is a navigable waterway of the United States. Project No. 2463 is located in this navigable reach of the river.

[2] House Document No. 207, 80th Cong., 1st Sess.. 1945.

While Applicant filed as part of its application an Exhibit R, it has not filed a recreational use plan. By Article 34 herein we are requiring Applicant to cooperate with Federal, State and local agencies in the interest of recreation in connection with the use of project lands and waters by the public and to keep us advised at stated intervals with respect to the results.

For the reasons set forth in our April 25, 1962 Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of May 1, 1939 and a termination date of April 30, 1989.

The Commission finds:

(1) Project No. 2463 affects navigable waters of the United States.

(2) Applicant is a corporation organized under the laws of the Commonwealth of Virginia, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 2,800 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable.

(7) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

(A) This license is hereby issued to Virginia Electric & Power Company (Licensee) of Richmond, Virginia, under Section 4(e) of the Federal Power Act (Act) for a period effective as of May 1, 1939, and terminating April 30, 1989, for the continued operation and maintenance of Project No. 2463, located on the Chesapeake and Ohio Canal which takes water from the James River, a navigable water of the United States, subject to the terms and conditions of the Act which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Park Hydroelectric Project No. 2463 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or limits which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interests therein are owned or held by the Licensee or by the United States—such project area and project boundary being more specifically shown and described by exhibits of the application for license which are designated as follows:

Exhibit J: (FPC No. 2463-1) "General Property Map."
Exhibit K: (FPC No. 2463-2) "Detail Map of Project Area."

(ii) all project works described as follows: (1) a short headrace from the Chesapeake and Ohio canal to the plant; (2) a short penstock connecting the headrace to the scroll case; (3) a concrete powerhouse containing one 3,380 hp water wheel connected to one generating unit rated at 2,100 kw; (4) appurtenant electrical and mechanical facilities—the location and designation of which are more fully shown and described on Exhibit L and M of the application for license which are designated as follows:

Exhibit L: (FPC No. 2463-3) "General Arrangement—Plan and Sections."

Exhibit M: One typewritten page entitled, "General Description of Equipment," filed with the Commission on April 20, 1964, and supplemented on October 14, and October 22, 1964.

(iii) all of the structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-3 (Revised August 1, 1964), entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States" (32 FPC 1114), which terms and conditions, designated as Articles 1 through 29, are attached hereto and made a part hereof except Articles 15, 16, 17, and 25 thereof, and subject to the following special conditions set forth herein as additional articles:

Article 30. The Licensee shall pay to the United States the following annual charge, effective May 1, 1939:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. The authorized installed capacity for such purpose is 2,800 horsepower.

Article 31. The right, power, and authority is reserved to the United States to construct or to the Commission to issue a license authorizing the construction, operation, and maintenance of a hydroelectric project which will more completely utilize the water resources of the reach of the James River in which the project is located.

Article 32. The acceptance of this license by the Licensee shall constitute its stipulation, consent and agreement, made upon its own behalf and upon the behalf of its successors and assigns for the benefit of the United States or the person or persons hereinafter constructing, operating and maintaining the more complete development or his or their successors and assigns, that said license shall be deemed surrendered at such time as Project No. 2463 becomes inoperative by reason of such more complete development, and that said Licensee, its successors or assigns shall not be entitled to any compensation for damages sustained by reason of such more complete development, other than (1) the right to receive from the owner of said more complete development for the unexpired term of the license for Project No. 2463 an annual amount of electric capacity and energy equal to the average annual amount generated by the project during the last five full years preceding commencement of construction of said more complete development upon payment to the owner of the more complete development of an annual amount equal to the average annual cost to the Licensee of producing the capacity and energy at Project No. 2463 during the last five full years preceding commencement of construction of said more complete development; or (2) in the event the owner of the more complete development is unwilling or unable to provide Licensee with the said amount of capacity or energy, the right to receive the difference, if any, between the annual cost of providing the lost capacity and energy from Project No. 2463 and the lowest reasonable cost of securing equivalent capacity and energy from an alternate source. If the Licensee for Project No. 2463 and the owner of such more complete development are unable to agree, the amount of capacity and energy lost to the Licensee by reason of such more complete development and the annual cost of producing equivalent capacity and energy at Project No. 2463, or the lowest reasonable cost of securing equivalent capacity and energy from an alternate source shall, upon application of the more complete development, be determined by the Commission.

Article 33. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall, after notice and opportunity for hearing, permit such reasonable use of its reservoirs or other project works or parts thereof as may be ordered by the Commission in the interest of comprehensive development of the waterway or waterways involved and the conservation and utilization of water resources of the region for water supply for steam electric, irrigation, industrial, municipal or similar purposes, consistent with the primary objective of the project. The Licensee shall receive such reasonable compensation as may be appropriate for use of its reservoirs or other project works or parts thereof for such purposes, any such compensation to be fixed either by Commission approval of an agreement between the Licensee and the party or parties benefiting or by the Commission in the event the parties are unable to agree. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the Applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

Article 34. Licensee shall cooperate with Federal, State and local agencies and individuals in the development and maintenance of fishing access areas and roads and such other facilities necessary for full recreational utilization by the public of project lands and adjacent waters, consistent with the terms of the license and the operation of the project. At the end of six (6) years from the date of issuance of this license and every sixth year thereafter, licensee shall advise the Commission of the results of cooperation with Federal, State and local agencies and of further recreation development at the project.

Article 35. The Commission reserves the right to determine at a later date what transmission facilities, if any, shall be included in this license as part of the project works.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

PUBLICIZING LICENSE CONDITIONS RELATING TO RECREATIONAL OPPORTUNITIES AT HYDROELECTRIC PROJECTS, DOCKET NO. R-255

ORDER NO. 299

PROMULGATING NEW PART 8 OF REGULATIONS UNDER THE FEDERAL POWER ACT

(Issued May 27, 1965)*

On January 30, 1964, the Commission gave notice by publication in the Federal Register (29 F.R. 1589) that it proposed to require licensees under the Federal Power Act to publicize license conditions of general public interest relating to the recreational aspects of project operations. Comments were invited from interested persons, particularly state recreation agencies and existing licensees, to be submitted by March 31, 1964. In response to this notice and invitation, the Commission has received a number of comments[1] with regard to the proposed requirement, and has taken them into consideration in preparing the text of the rule which is herein promulgated.

The comments disclosed a general accord with the objectives of the proposed rule, but some doubts were expressed as to its effectiveness. The rule has been amended to express more clearly the strong conviction of the Commission that where a licensed project contains recreational resources, it becomes the duty of the licensee to furnish adequate publicity of such resources.

The several types of notice required by the rule are intended to serve two important, but not all-encompassing purposes: to put prospective purchasers of land in the vicinity of the project on notice of the fact of public access, as implemented by a recreation plan, and the impact on recreational suitability of the necessary operations of the project; and to inform members of the public in search of recreational facilities in the neighborhood of the project of the location and terms of use of such facilities within the project. The proposed rule has been modified to accomplish these purposes more effectively. In the provisions enumerating the contents of the signs to be posted, the emphasis has been changed to make the signs more directly an invitation to use the facilities. We have also revised the proposal so as to avoid the posting of signs at unnecessary places.

The few adverse comments either resulted from the belief that existing publicity through cooperation with state and local agencies is adequate, or that the rule should be amended simply to require notice to such agencies. Interested state agencies already receive notice of license applications with opportunities for comment, and future applicants will be cooperating with these agencies to develop recreational plans. The requirements contemplated by this rule, which is overwhelmingly supported by the state recreational agencies, are not in conflict with, but rather complement, the activities of licensees and state and local agencies.

The Commission further finds:

(1) In view of the foregoing, and upon consideration of all relevant matters presented, this amendment is necessary and appropriate for the purposes of the Federal Power Act.

---

*Published in the Federal Register on June 3, 1965 (30 F.R. 7313).

[1] Comments were received from one public power association, one public utility (also a licensee), 11 other licensees and 13 State recreation agencies.

The Commission, acting pursuant to the Federal Power Act, as amended, particularly sections 4, 10 and 309 thereof (41 Stat. 1065, 1068; 16 U.S.C. 797, 803, 825h), *orders:*

(A) Subchapter B, Regulations Under the Federal Power Act, Chapter I, Title 18, of the Code of Federal Regulations, is amended by inserting new Part 8, to read as follows:

Part 8—PUBLICIZING LICENSE CONDITIONS RELATING TO RECREATIONAL OPPORTUNITIES.

§ 8.1—Publication of license conditions relating to recreation.

Following the issuance or amendment of a license, the licensee shall make reasonable efforts to keep the public informed of the availability of project lands and waters for recreational purposes, and of the license conditions of interest to persons who may be interested in the recreational aspects of the project or who may wish to acquire lands in its vicinity. Such efforts shall include but not be limited to: the publication of notice in a local newspaper once each week for four weeks of the project's license conditions which relate to public access to and the use of the project waters and lands for recreational purposes, recreational plans, installation of recreation and fish and wildlife facilities, reservoir water surface elevations, minimum water releases or rates of change of water releases and such other conditions of general public interest as the Commission may designate in the order issuing or amending the license.

§ 8.2—Posting of project lands as to recreational use and availability of information.

(a) Following the issuance or amendment of a license, the licensee shall post and shall maintain at all points of public access which are required by the license (or at such access points as are specifically designated for this purpose by the licensee) and at such other points as are subsequently prescribed by the Commission on its own motion or upon the recommendation of a public recreation agency operating in the area in which the project is located, a conspicuous sign giving the name of the project and the owner of the project, a statement that it is licensed by the Commission and the project number, directions to the areas of the project which are available for public recreational use, permissible times and activities, and other regulations regarding such use, and advising that further information may be obtained at local offices of the licensee in the vicinity of the project.

(b) The licensee shall make available for inspection at its local offices in the vicinity of the project the recreation plan approved by the Commission and the entire license instrument, properly indexed for easy reference to the license conditions designated for publication in § 8.1.

[Sections 4, 10, 309, 41 Stat. 1065, 1068; 49 Stat. 839, 842, 858; 16 U.S.C. 797, 803, 825h]

(B) This amendment herein adopted shall become effective July 1, 1965.

(C) The caption of this proceeding is amended to read as set forth above.

(D) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

WILLIAM G. WEBB, ET AL., DOCKET NO. G-6887, ET AL.

ORDER REQUIRING EL PASO NATURAL GAS COMPANY, RESPONDENT, TO SUBMIT IN EVIDENCE COST OF SERVICE SUMMARY AND SUPPORTING PREPARED TESTIMONY

(Issued May 27, 1965)

On March 15, 1965, the Public Utilities Commission of the State of California (California) filed a petition, pursuant to Section 1.7 of the Commission's Rules of Practice and Procedure requesting an order requiring El Paso Natural Gas Company (El Paso) to submit at the hearing in these proceedings a cost of service summary, supported by the prepared testimony of a qualified witness, which will indicate El Paso's unit cost-of-service attributable to the total recoverable reserves to be transferred by the producer applicants to El Paso pursuant to all the contracts at issue in these proceedings under which applicants have the option of assigning gas leaseholds to El Paso. Timely answers in opposition were filed by El Paso and William G. Webb, *et al.* and answers in support by intervenors Southern California Gas Company and Southern Counties Gas Company of California (Southern Companies) and by the staff of the Commission.

These proceedings involve applications by independent producers seeking permission and approval to abandon in whole or in part certificated sales of natural gas for resale in interstate commerce from acreage in the San Juan Basin of New Mexico and Colorado. The prices under the applicants' currently effective rate schedules range from 10 cents to 14 cents per Mcf. Pursuant to options granted them by El Paso, the applicants seek to assign their leasehold interests to El Paso and to discontinue the gas sales.

As we stated in our order consolidating these applications for hearing issued in these proceedings on December 1, 1964, we are concerned lest the proposed abandonments result in an unwarranted increase in El Paso's jurisdictional unit cost of service to the detriment of El Paso's jurisdictional customers. This gas presently costs the consumer somewhere between 10 cents and 14 cents an Mcf and the record in this case should reflect what this gas will cost them if the abandonment is permitted and the leaseholds are assigned to El Paso. As pointed out by California, in order to measure the difference in cost it is necessary to determine El Paso's unit cost of service attributable to the total recoverable reserves which are, by assignment of the leaseholds, to be transferred to El Paso.

The Commission finds:

For the foregoing reasons the petition of California should be granted.

The Commission orders:

El Paso Natural Gas Company, respondent, is hereby ordered to submit in evidence in these proceedings a cost of service summary supported by the prepared testimony of a qualified witness, which will indicate El Paso's unit cost of service attributable to the total recoverable reserves to be transferred by applicants to El Paso pursuant to all the contracts at issue in these proceedings. The foregoing will be filed with the Commission and served upon all the parties to this proceeding on or before July 26, 1965.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

ALABAMA ELECTRIC COOPERATIVE, INC. v. ALABAMA POWER COMPANY, DOCKET NO. E-7183

ORDER ACCEPTING RATE SCHEDULES FOR FILING AND AMENDING ORDER FOR HEARING ISSUED FEBRUARY 5, 1965

(Issued May 28, 1965)

This order accepts for filing as initial rate schedules, two wholesale electric service contracts between Alabama Power Company and the Cities of Troy and Luverne, Alabama, respectively. Those contracts and the rates and charges reflected therein are subject to an investigation and hearing directed by order of the Commission issued February 5, 1965, 33 FPC 183.* That order and the commencement of this proceeding followed complaints by the Alabama Electric Cooperative, Inc. against Alabama Power Company, which complaints contemplated the filing of the wholesale electric service contracts as rate schedules of the company.

In accepting these contracts for filing as rate schedules of Alabama Power Company effective June 1, 1965, as hereinafter provided, this order supplements the former order for hearing issued February 5, 1965, so as to expressly provide among the issues to be heard in this proceeding the question of lawfulness of these rate schedules. Alabama Power Company requests an effective date of June 1, 1965 for the schedules for service to the two cities, that date being the proposed date for commencement of service to the cities. Currently, Troy and Luverne receive their electric power and energy requirements at wholesale from Alabama Electric Cooperative, Inc. The contract for service to the City of Luverne has been designated in the files of the Commission as Alabama Power Company's Rate Schedule FPC No. 85. The contract for service to the City of Troy has been designated as that Company's Rate Schedule FPC No. 86.

In requesting an effective date of June 1, 1965, Alabama Power Company completed its filing with respect to the City of Luverne, including all supporting materials, on April 21, 1965. The Company's filing was completed on May 7, 1965, with respect to the City of Troy. The Company requests, pursuant to Section 35.11 of the Regulations under the Federal Power Act, a waiver of the Commission's 30-day prior notice requirement so as to permit an effective date for its rate schedule for service to the City of Troy of June 1, 1965.

The City of Troy, by letter dated May 6, 1965, supports the Company's request for waiver of the Commission's Regulations pursuant to Section 35.11 thereof. Troy indicates that it has terminated, effective June 1, 1965, its existing power supply contract with the Cooperative and that it is essential that Troy have a power supply and receive power from the Company on June 1, 1965. In our opinion, the pendency of the above-entitled proceeding and the circumstances as alluded to by Alabama Power Company and the City of Troy constitute a sufficient showing of good cause for waiver of our requirements for filing and posting by the Company of its proffered rate schedule for wholesale electric service not less than 30 days prior to the date on which the electric service is to commence.

Alabama Electric Cooperative, Inc. on May 19, 1965 filed protests against the filing by Alabama Power Company of its initial rate schedules for wholesale electric service to the Cities of Troy and Luverne. The grounds of these protests are the allegations previously made by the Cooperative in Docket No.

---

*Rehearing denied by Commission order issued March 19, 1965, 33 FPC 586.

E-7183 with respect to the lawfulness of the rates and charges of the Company to the Cooperative as related to its rates and charges to other customers. No claim is made that the filings are not complete under our rules. Since these are initial service filings they are not subject to suspension under Section 205 of the Act. As indicated, *supra*, however, the filings are being accepted subject to the outcome of pending Docket No. E-7184 within which the question of the lawfulness of the newly filed rates will be considered.

The Commission further finds:

It is necessary and appropriate for the purposes of the Federal Power Act, particularly Sections 205, 206, 306, 307, 308 and 309 thereof, that Alabama Power Company's Rate Schedules FPC Nos. 85 and 86 be accepted for filing to become effective as of June 1, 1965, good cause having been shown for waiver of the 30-day notice period provided in Section 35.3 of Part 35 of the Commission's Regulations under the Federal Power Act with respect to Alabama Power Company's Rate Schedule FPC No. 86; that the Commission's order for hearing issued February 5, 1965, be amended so as to include expressly among the issues to be heard in this proceeding the lawfulness of Alabama Power Company's Rate Schedules FPC Nos. 85 and 86.

The Commission orders:

(A) The 30-day notice period provided in Section 35.3 of Part 35 of the Commission's Regulations under the Federal Power Act is hereby waived with respect to Alabama Power Company's Rate Schedule FPC No. 86.

(B) Alabama Power Company's Rate Schedules FPC Nos. 85 and 86 are hereby accepted for filing to become effective as of June 1, 1965.

(C) Paragraph (A) of the Commission's order issued February 5, 1965, in the above-entitled matter is amended so as to include expressly as among the issues to be heard in this proceeding the lawfulness of Alabama Power Company's Rate Schedules FPC Nos. 85 and 86.

(D) This acceptance for filing does not constitute approval of any rate, charge, classification, service or any rule, regulation, contract or practice relating thereto provided for in the above-designated rate schedules, nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation affecting or relating to such rate, charge, classification or service; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in this or in any other proceeding now pending or hereafter instituted by or against Alabama Power Company.

Before Commissioners: Joseph C. Swidler, Chairman: L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

ALABAMA ELECTRIC COOPERATIVE, INC. v. ALABAMA POWER COMPANY, DOCKET NO. E-7183

ORDER DEFERRING PROCEEDINGS

(Issued May 28, 1965)

There are now before us pleadings filed by the Cities of Troy and Luverne, Alabama, which raise the question of our jurisdiction over the sales of electric energy by Alabama Electric Cooperative, Inc., (Cooperative) to them and the lawfulness of its rates. It appears that Alabama Power Company (APC) has been selling electric energy to the Cooperative, and the Cooperative has been selling energy to the Cities, but that beginning June 1, 1965, APC has contracted to begin selling energy directly to the Cities. APC has filed its contracts for such service as rate schedules, and by our order of May 28, 1965 we have accepted them for filing effective June 1, 1965.

These proceedings arose with the filing of a complaint by the Cooperative against APC alleging, among other things, that the rates proposed to be charged by the company to the Cities give a preference to the Cities and subject the Cooperative to prejudice and disadvantage. On March 1, 1965, the Cities each filed a document entitled "Petition * * * to Intervene, Motion to Dismiss, Answer and Complaint." Both Cities asked that they be permitted to intervene and asserted that it is in the best interests of their citizens to be connected with a regulated public utility rather than an unregulated cooperative. Intervention was granted by the Commission's order of March 19, 1965.

Both Cities also asked that the Cooperative's complaint be dismissed insofar as it attempts to establish a differential between rates charged by APC to a cooperative and rates charged to a municipality, and insofar as it seeks to deprive the Cities of their right to purchase power from APC. The Commission in its order of March 19, 1965, denied the Cities' request to dismiss the complaint.

In their complaint the Cities affirmatively seek relief against the Cooperative alleging that its rates to them are unreasonable and discriminatory and place the Cities at a competitive disadvantage. They refer to the Commission's order of August 6, 1964, in *Dairyland Power Cooperative, et al.*, 32 FPC 529, Docket No. E-7113, where we deferred further Commission proceedings until January 1, 1966, on a test case to determine the Commission's jurisdiction over several electric cooperatives, in order to provide the Congress with an opportunity to consider the matter. However, noting that the Cooperative has here invoked the jurisdiction of the Commission to secure relief at their expense, the Cities ask that the Commission take jurisdiction over the Cooperative's sales to them and grant appropriate relief. The Cooperative filed brief answers on March 25 and 26, 1965, and the Cities filed replies on April 12, 1965.

We see no need for immediate proceedings on the complaints filed by the Cities. They may become moot insofar as relief for the future is concerned since the Cities propose to commence buying power from APC on June 1, 1965. The Cities presumbly will continue to buy power from APC unless some determination made in the present proceedings with respect to the complaint of the Cooperative significantly changes the situation. In view of our lack of reparations authority any possible relief to the Cities resulting from any conceivable over charges or improper restrictions during past periods is legally questionable; in any event it can be considered at a future time, if necessary. In view of the above, we believe consideration of the complaints of the Cities should be deferred pending our determination of the Cooperative's complaint against APC. Meanwhile, the hearings and other proceedings on the Cooperative's complaint can go forward. The Cities have been granted intervention and are in a position to protect their interests in buying power directly from APC at lawful rates; this includes full opportunity to renew their request that we consider their complaint prior to any final action which would substantially affect their future course of action. Since the Cooperative has opposed consideration of these matters at this time it will not be in a position to object in the event that our following the course of action it advocates necessarily results in delay in the ultimate resolution of this proceeding.

The Commission further finds:

Consideration of the complaints of the Cities of Troy and Luverne, Alabama, against the Alabama Electric Cooperative, Inc., at this time, pending further developments in this proceeding, is not in the public interest.

The Commission orders:

Hearings and other proceedings on the issues raised by the complaint of the Cities of Troy and Luverne, Alabama, are hereby deferred until further order of the Commission in the above-entitled proceedings, without prejudice to the complainants' renewing their request for immediate consideration at such time as it may appear that their future operations as customers of the Alabama Electric Cooperative, Inc., would be adversely affected in the absence of such consideration.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

ZENITH NATURAL GAS COMPANY AND ZENITH GAS SYSTEM, INC., DOCKET NO. CP65-316; OKLAHOMA NATURAL GAS COMPANY, DOCKET NO. CP65-317

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND DECLARATION OF EXEMPTION, ACCEPTING TARIFF FOR FILING AND CANCELLING TARIFF

(Issued May 28, 1965)

On April 6, 1965, Zenith Natural Gas Company (Zenith) and Zenith Gas System, Inc. (Gas System) filed in Docket No. CP65-316 a joint application, as supplemented on April 9, May 12 and May 13, 1965, pursuant to Sections 7(b) and 7(c) of the Natural Gas Act, wherein Gas System seeks permission and approval to abandon its natural gas facilities and operations, and wherein Zenith requests a certificate of public convenience and necessity authorizing the acquisition of certain facilities from Gas System, and authorizing, in addition, the construction and operation of certain natural gas facilities, the sale of natural gas, and the exchange of natural gas, all as more fully set forth in the application.

Gas System owns and operates a small gas system in southern Kansas and northwestern Oklahoma, and was issued a "grandfather" certificate by the Commission on December 11, 1945, in Docket No. G-393 (4 FPC 1122). Zenith is a newly-formed and wholly-owned subsidiary of Oklahoma Natural Gas Company (Oklahoma), a large, intrastate corporation operating entirely within the State of Oklahoma. Oklahoma purchases, transports and distributes natural gas throughout most of the State of Oklahoma, serving 181 cities and towns at retail and 36 towns at wholesale.

The application herein filed by Zenith and Gas System sets forth a proposal whereby Gas System is to dispose of all of its natural gas facilities and terminate all of its natural gas operations, and whereby Zenith and Oklahoma are to acquire its facilities and continue its service.

The transfer of facilities, which will be carried out pursuant to an agreement between Gas System and Oklahoma dated December 21, 1964, is proposed as follows:

a. Zenith is to acquire from Gas System all of Gas System's physical properties in Kansas, with the exception of the distribution system in Hardtner, Kansas and the facilities used for farm-tap mainline sales in Kansas, and including one mile of Gas System's 8-inch line extending south into Oklahoma;

b. Oklahoma is to acquire from Gas System all of Gas System's physical properties in Oklahoma, excluding the aforementioned one-mile segment of 8-inch line, and including the aforementioned Hardtner distribution system and farm-tap facilities in Kansas.

c. In addition, Zenith proposes to construct and operate a measuring station at the terminus of the aforementioned one-mile segment of 8-inch line, and seeks authorization for the sale of natural gas to Oklahoma by means of such facility, pursuant to an agreement dated April 5, 1965. Annual volumes in the third year are estimated to total 942,693 Mcf (at 14.73 psia).

Gas System has only one jurisdictional sale. It is a sale and exchange of gas to and with Cities Service Gas Company (Cities)[1] pursuant to an agreement between the parties dated July 23, 1960. Zenith proposes to continue said sale and exchange of gas pursuant to an agreement with Cities dated April 2, 1965. Zenith and Oklahoma will also assume the non-jurisdictional natural gas service now provided by Gas System. No existing customer of Gas System will cease to be served, nor will present rates be changed as a result of the implementation of the subject proposals.

Total estimated cost of Zenith's proposed construction is $2,800, and will be financed with general funds.

On April 6, 1965, Oklahoma filed in Docket No. CP65-317 an application pursuant to Section 1(c) of the Natural Gas Act for exemption from the provisions thereof, alleging that any natural gas it receives, transported in interstate commerce or sold in interstate commerce for resale, will be received from another person (Zenith) and consumed within the boundaries of the State of Oklahoma; and alleging further that its rates, services and facilities are and will be subject to regulation by the Corporation Commission of the State of Oklahoma, and that such Commission is and will continue to exercise its jurisdiction. Attached as Exhibit X-1 to its application was a Certificate of Jurisdiction and Exercise Thereof, duly executed by the Corporation Commission of the State of Oklahoma on April 1, 1965.

Upon consideration of Oklahoma's application, and in view of the nature of its prospective operations as a result of the proposed acquisition of facilities from Zenith Gas System, Inc., it appears that Oklahoma should be declared exempt from the provisions of the Natural Gas Act with respect to such facilities and operations.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the applications has been filed.

At a hearing held on May 28, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Zenith Gas System, Inc., a Delaware corporation having its principal place of business in Alva, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 11, 1945, in Docket No. G-393 (4 FPC 1122).

(2) Zenith Natural Gas Company, a Delaware corporation having its principal place of business in Tulsa, Oklahoma, upon completion of the proposed acquisition, and upon completion of construction and commencement of operation of the proposed facilities will be engaged in the transportation of natural gas in interstate commerce and in the sale of natural gas in interstate commerce for resale for ultimate public consumption, and will be a "natural-gas company" within the meaning of the Natural Gas Act.

(3) The proposed acquisition, construction and operation of facilities by Zenith, the proposed sale of natural gas by Zenith to Oklahoma, and the pro-

---

[1] Authorized by Commission order issued December 19, 1960, in Docket No. CP60-113, 24 FPC 1101.

posed sale and exchange of natural gas by Zenith to and with Cities Service Gas Company, as hereinbefore described and as more fully described in the application in Docket No. CP65-316, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The aforesaid acquisition, construction and operation of facilities, and the aforesaid sale and sale and exchange of natural gas by Zenith are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Zenith is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(6) Public convenience and necessity require that the certificate issued hereinafter to Zenith, and the rights granted thereunder be conditioned upon its compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), (d)(2), (d)(3) and (e) of Section 157.20 of such Regulations.

(7) The natural gas facilities and service proposed to be abandoned by Gas System, as hereinbefore described and as more fully described in the application in Docket No. CP65-316, are subject to the jurisdiction of the Commission, and the abandonment thereof by Gas System is subject to the provisions of Subsection (b) of Section 7 of the Natural Gas Act.

(8) The proposed abandonment by Gas System is permitted by the public convenience and necessity, and approval therefor should be granted as hereinafter ordered.

(9) Oklahoma Natural Gas Company is a Delaware corporation having its principal place of business in Tulsa, Oklahoma, and is authorized to do business in the States of Oklahoma and Kansas.

(10) All natural gas received by Oklahoma from Zenith in Oklahoma is to be consumed ultimately within the State of Oklahoma.

(11) The Corporation Commission of the State of Oklahoma has certified to the Federal Power Commission that it has and is exercising regulatory jurisdiction over the rates, service and facilities of Oklahoma.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Zenith Natural Gas Company, authorizing the acquisition, construction and operation of facilities, the sale of natural gas to Oklahoma Natural Gas Company, and the sale and exchange of natural gas to and with Cities Service Gas Company, as hereinbefore described and as more fully described in the application in Docket No. CP65-316, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Zenith's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), (d)(2), (d)(3) and (e) of Section 157.20 of such Regulations.

(C) The acquisition and construction of facilities hereby authorized shall be completed and in actual operation by Zenith, and the sale of natural gas to Oklahoma shall be undertaken, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations, within one year from the date on which this order issues.

(D) Zenith Natural Gas Company FPC Gas Tariff, Original Volume No. 1 is hereby accepted for filing, to become effective on the date of the transfer of the properties.

(E) Permission for and approval of the abandonment by Gas System of the natural gas facilities and service hereinbefore described, as more fully described in the application in Docket No. CP65-316, be and the same are hereby granted.

(F) Gas System shall advise the Commission of the date of the abandonment of said facilities within 10 days thereof.

(G) Zenith Gas System, Inc., FPC Gas Tariff, Original Volume Nos. 1 and 2 is hereby cancelled, effective on the date of the transfer of the properties.

(H) The certificates heretofore issued to Gas System in Docket Nos. G-393, G-9084, G-9085 and G-12013 are hereby vacated, effective the date of abandonment. The certificate heretofore issued in Docket No. CP60-113 is hereby vacated, effective the date of abandonment, only insofar as it pertains to Gas System.

(I) Oklahoma Natural Gas Company is hereby declared exempt from the provisions of the Natural Gas Act, and the orders, rules and regulations of this Commission issued thereunder, with respect to the facilities to be acquired and the natural gas service to be assumed by it as a result of the authorizations granted herein.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

BLUE DOLPHIN PIPE LINE COMPANY, DOCKET NO. CP65-323

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 1, 1965)

On April 9, 1965, Blue Dolphin Pipe Line Company (Applicant) filed in Docket No. CP65-323 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and the transportation of natural gas in interstate commerce, all as more fully set forth in the application.

Applicant, a wholly-owned subsidiary of Shell Oil Company (Shell), proposes to construct and operate a multiphase pipeline extending from a point in the Gulf of Mexico to a point near Freeport, Texas. Applicant will utilize this line to provide natural gas transportation service for Dow Chemical Company (Dow), and will transport gas, crude oil and condensate liquids for Shell simultaneously through the same line. The gas transported will be solely for use in the plants of Dow and Shell and will not be for resale. Dow will use its gas in processing chemicals and metals in its Freeport plants; Shell will use its gas for fuel in a proposed crude oil and condensate liquid processing plant to be located in Freeport.

The proposed line will consist of 40.6 miles of 20-inch pipeline and 9.2 miles of 16-inch pipeline, together with orifice meter and regulator stations and related equipment, and will be maintained by Shell Pipe Line Corporation, also a wholly-owned subsidiary of Shell.

The gas will be purchased by Dow at the wellhead from Shell's reserves in the Federal Block No. 288 Field on the Outer Continental Shelf of the Gulf of Mexico, offshore from Texas Railroad Commission District No. 3 at a price of 16¢ per Mcf. In the third year, Applicant will transport an estimated 66,329,000 Mcf of gas for Dow, and 874,000 Mcf of gas and 2,353,393 barrels of crude oil and condensate liquids for Shell. The 15 year gas transportation agreement dated March 1, 1965 between Applicant and Dow provides a price of 1.5 cents per Mcf. Shell will pay Applicant the same transportation price and in addition, 6.0 cents per barrel for the transportation of crude oil and condensate liquids.

Total estimated cost of Applicant's facilities is $7,400,000, and will be financed by the sale of common stock to Shell and by means of an unsecured loan from Shell, in the amounts of $1,850,000 and $5,550,000 respectively.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 28, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Blue Dolphin Pipe Line Company, a Delaware corporation having its principal place of business in Houston, Texas, upon completion of construction and commencement of operation of the proposed facilities will be engaged in the transportation of natural gas in interstate commerce, and will be a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The proposed construction and operation of facilities and transportation of natural gas by Applicant hereinbefore described, as more fully described in the application in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and transportation of natural gas are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, Blue Dolphin Pipe Line Company, authorizing the construction and operation of facilities and the transportation of natural gas hereinbefore described, as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation and the proposed transportation of natural gas undertaken, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations, within one year from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

COLORADO INTERSTATE GAS COMPANY, DOCKET NO. CP65–40; KANSAS-COLORADO UTILITIES, INC., DOCKET NO. CP65–55

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 1, 1965)

On August 10, 1964, Colorado Interstate Gas Company (Colorado) filed in Docket No. CP65–40 an application, as supplemented on March 10, 1965, pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon certain natural gas facilities, and for a certificate of public convenience and necessity authorizing the sale of natural gas, all as more fully set forth in the application.

On August 27, 1964, Kansas-Colorado Utilities, Inc. (Kansas-Colorado) filed in Docket No. CP65–55 an application, as amended on September 21, 1964 and October 1, 1964, as revised on December 14, 1964, and as supplemented on March 9, 1965, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the acquisition and continued operation of certain natural gas facilities, the construction and operation of other facilities, and the sale of natural gas, all as more fully set forth in the application.

The above applications are related. Colorado proposes to abandon, by sale to Kansas-Colorado, approximately 86.5 miles of 22-inch pipeline, together with 10.8 miles of lateral line and 27 sales meter stations, extending from Colorado's Bivins Compressor Station in Moore County, Texas to Clayton, New Mexico, pursuant to an agreement between the parties dated July 28, 1964. In addition, Colorado seeks authorization for the sale of natural gas to Kansas-Colorado, with total volumes estimated to be 3,322,622 Mcf[1] in the third year. Said sale will be made under Colorado's initial rate schedule F–2 at the flat rate of 17 cents per Mcf. The above abandonment of facilities and sale of gas will enable Kansas-Colorado to take over, in lieu of Colorado, all service provided from the Bivins-Clayton line.

Kansas-Colorado, in addition to the acquisition of the above facilities, proposes to construct and operate five pipeline systems in the general area between the Bivins Station and Clayton, New Mexico, aggregating approximately 282 miles of 2 to 6-inch pipeline, for service to irrigation customers, and proposes to purchase a sixth system in the same area consisting of 70 miles of 2 to 6-inch pipeline serving irrigation customers.

Kansas-Colorado also seeks authorization for the sale of natural gas to Pioneer Natural Gas Company (Pioneer) and Southern Union Gas Company (Southern). Estimated annual sales in the third year are as follows: (1) 36,699 Mcf on a firm basis to Pioneer for resale in Texline, Texas; and (2) 226,466 Mcf on a firm basis and 145,517 Mcf on an interruptible basis to Southern for resale in Clayton, New Mexico. Kansas-Colorado proposes to continue the sale of gas on an interruptible basis to Felt Water Development Co. for resale to irrigation customers.[2] Volumes are estimated to total 191,295 Mcf in 1967. Kansas-Colorado also plans direct interruptible sales to main line irrigation customers of an estimated 2,534,609 Mcf in the third year.

Kansas-Colorado will provide jurisdictional firm service at the flat rate of 28 cents per Mcf under its proposed GS–1 Rate Schedule, and will provide jurisdictional interruptible service for 21.5 cents per Mcf under its proposed IS–1 Rate Schedule.

The estimated total cost of the facilities to be constructed and acquired by Kansas-Colorado is $2,445,350, and will be financed by means of bank loans.

On November 10, 1964, Southern filed a petition to intervene in this proceeding, stating that it desired to protect its own interest and the interest of the consuming public served by it. On March 9, 1965, Kansas-Colorado filed a supplement to its amended application of December 14, 1964, and therein stipulated that it agrees not to file for an increase in its filed F.P.C. rates for resale service off the Bivins-Clayton line for a period of not less than five years commencing with the date of authorization in Docket No. CP65–55, provided that Colorado does not increase its rates to Kansas-Colorado, and provided further that Kansas-Colorado is not required to pay any new or increased taxes subsequent to the date of authorization. As a result of the above filing by Kansas-Colorado, Southern, on March 12, 1965, withdrew its petition to intervene. No other intervention has been filed.

At a hearing held on May 28, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

---

[1] All volumes herein at 14.65 psia.

[2] Authorized by Commission order issued May 6, 1964, in Docket No. CP64–137, 31 FPC 1121. This service will be provided under Kansas-Colorado's existing rate schedule I–1 at 23.5 cents per Mcf.

The Commission finds:

(1) Colorado Interstate Gas Company, a Delaware corporation having its principal place of business in Colorado Springs, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of June 5, 1945, in Docket No. G-294 (4 FPC 936).

(2) Kansas-Colorado Utilities, Inc., a Kansas corporation having its principal place of business in Colorado Springs, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 5, 1953, in Docket No. G-2138 (12 FPC 750).

(3) The proposed sale of natural gas by Colorado hereinbefore described, as more fully described in the application in Docket No. CP65-40; and the proposed acquisition, construction and operation of facilities and sales of natural gas by Kansas-Colorado hereinbefore described, as more fully described in the application in Docket No. CP65-55, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The aforesaid sale of natural gas by Colorado, and the aforesaid acquisition, construction and operation of facilities and sales of natural gas by Kansas-Colorado are required by the public convenience and necessity, and certificates therefor should be issued as hereinafter ordered and conditioned.

(5) Colorado and Kansas-Colorado are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(6) Public convenience and necessity require that the certificate hereinafter issued to Colorado be conditioned upon its compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of such Regulations.

(7) Public convenience and necessity require that the certificate hereinafter issued to Kansas-Colorado be conditioned upon its compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), (d) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Colorado Interstate Gas Company authorizing the sale of natural gas to Kansas-Colorado Utilities, Inc., hereinbefore described, as more fully described in the application in Docket No. CP65-40, upon the terms and conditions of this order.

(B) A certificate of public convenience and necessity be and the same is hereby issued to Kansas-Colorado Utilities, Inc., authorizing the acquisition, construction and operation of facilities and sales of natural gas to Pioneer Natural Gas Company and Southern Union Gas Company, as hereinbefore described, as more fully described in the application in Docket No. CP65-55, upon the terms and conditions of this order.

(C) The certificate issued to Colorado by paragraph (A) above and the rights granted thereunder are hereby conditioned upon its compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of such Regulations.

(D) The certificate issued to Kansas-Colorado by paragraph (B) above and the rights granted thereunder are hereby conditioned upon its compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), (d) and (e) of Section 157.20 of such Regulations.

(E) The certificate herein issued to Kansas-Colorado is granted on the express condition that the interruptible service authorized therein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Kansas-Colorado for firm service to its customers.

(F) Colorado's initial Rate Schedule F-2, consisting of Original Sheet Nos. 18b and 18c to its FPC Gas Tariff, First Revised Volume No. 1 is hereby accepted for filing, effective on the date on which this order issues.

(G) The acquisition, construction and operation of facilities hereby authorized shall be completed and in actual operation, and the sales of natural gas shall be undertaken, as provided by paragraph (b) of Section 157.20 of the Regulations under the Natural Gas Act, within one year from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

POWER AUTHORITY OF THE STATE OF NEW YORK, PROJECT NO. 2216

ORDER MODIFYING COMMISSION ORDER AND AMENDING LICENSE (MAJOR)

(Issued June 1, 1965)

The Power Authority of the State of New York (Applicant), licensee for Project No. 2216, located at Niagara Falls on the Niagara River in New York State, filed under Section 6 of the Federal Power Act for amendment of Article 26 of its license and modification of paragraph (B) of the Commission's order of May 23, 1961, 25 FPC 1013.

Subparagraph (b)(7) of Public Law 85-159 (71 Stat. 401), which authorized the Commission to issue a license to Applicant for the Niagara project requires that the licensee of such project pay the United States' share of the cost of the remedial works necessary to preserve and enhance the beauty of the Niagara Falls and the River. Pursuant to that provision, the Commission included in the license for Project No. 2216 the present Article 26 which requires the licensee to pay to the United States its share of the construction costs of remedial works in addition to its share of the operation, maintenance, and replacement costs of the remedial works. This article further provides that the amounts to be paid thereunder would be determined by the Commission.

Article II of the Treaty between the United States and Canada executed on February 27, 1950, concerning uses of the Niagara River, provides that the construction of remedial works be undertaken under the supervision of the International Joint Commission and that the cost of such works be divided equally between the United States and Canada.

Since the remedial works are located primarily in Canada and facilities for controlling them are likewise located in Canada, the bulk of the cost of maintaining and operating these works are incurred in the first instance by The Hydro Electric Power Commission of Ontario (Ontario Hydro). To a lesser extent related costs are incurred by the United States Corps of Engineers.

Under paragraph (B) of the Commission's order of May 23, 1961, bills for operational and maintenance costs, with regard to the existing remedial works, have been submitted by Ontario Hydro to the Corps of Engineers. The Corps of Engineers then submitted this bill along with its own bill, to this Commission which in turn has billed the Applicant for its share of the costs. Applicant has proposed to Ontario Hydro, the Corps of Engineers and the International Joint Commission that a revised billing procedure be adopted whereby Applicant would be billed directly by Ontario Hydro and by the Corps of Engineers for its share of the cost of operating, maintaining, and replacing the remedial works, as well as for its proportionate share of any future remedial works, along with their operational, maintenance, and replacement costs.

All of the interested parties are in agreement that the proposed change in billing procedure will reduce delays and expense.

The Commission finds:

Amendment of Article 26 of the license for Project No. 2216 and modification of paragraph (B) of the aforementioned May 23, 1961, order of the Commission as proposed by the Applicant, is in the public interest.

The Commission orders:

(A) Effective as of January 1, 1965, Article 26 of the license for Project No. 2216 is hereby amended to read as follows:

> *Article 26.* The Licensee shall pay to the United States and include in its net investment in the project herein authorized the United States share of the cost of the construction of the remedial works, including engineering and economic investigations, undertaken in accordance with Article II of the treaty between the United States of America and Canada concerning uses of the waters of the Niagara River signed February 27, 1950, whenever such remedial works are constructed. The Licensee shall also pay the United States share of the cost of operation, maintenance, and replacements of the remedial work. The amounts paid under this article shall be subject to review by the Commission.

(B) Effective as of January 1, 1965, paragraph (B) of the aforementioned Commission order issued May 23, 1961, is hereby modified to read as follows:

> (B) Payments for the United States share of further costs incurred in construction, alteration, operation and maintenance of remedial works shall be made by the Power Authority of the State of New York within 30 days of the rendition hereafter of bills therefor. Copies of such bills shall be submitted to the Commission promptly after payment thereof.

(C) The amendment of the license for Project No. 2216 in the manner set out above shall not operate to alter or amend the license in any other respect, and shall not in any way constitute a waiver of any other part, provision or condition of the license.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgement of the acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

OPINION NO. 462

WESTERN LIGHT & TELEPHONE COMPANY, INC., DOCKET NO. E-7187

OPINION AND ORDER MODIFYING AND ADOPTING INITIAL DECISION AUTHORIZING MERGER

(Issued June 1, 1965)*

Syllabus

1. Proposed merger of two Class A public utilities operating in different states with nearest reasonable junction points approximately 150 miles apart, and no immediate physical interconnection contemplated, is approved as consistent with public interest. P. 1148.
2. In exercising its jurisdiction over mergers, Commission cannot ignore standards underlying parallel regulation of holding companies by Securities and Exchange Commission. P. 1149.
3. Showing of positive benefit to counteract detrimental consequences of one-company ownership is essential to approval of merger where, as here, two isolated utility systems are located in different states and participating in separate pooling and other coordinating efforts. P. 1149.
4. Evidence indicates merger will have positive effect upon acceleration of effective interconnection between two parts of resulting system and electric utilities in Kansas and Colorado in general. P. 1149.
5. Merger conditioned on continuation of studies of methods for accelerating interconnection and coordination. P. 1149.
6. Merged company required to maintain separate accounts for two-part utility system. P. 1150.
7. In a proceeding under Section 203 of the Federal Power Act, Commission *authorizes* merger of facilities.

Alan R. Johnston and *Melvin A. Hardies* for Western Light & Telephone Company, Inc.

John C. Woelk for Kansas Corporation Commission.

Wallace Edward Brand for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

BLACK, *Commissioner:*

This proceeding is before us on review of an initial decision issued April 22, 1965, by Examiner Harry W. Frazee authorizing the merger of Western Light & Telephone Company, Inc., a Kansas corporation (Western Light), the applicant herein, with Western Power & Gas Company, a Delaware corporation (Westgas). The decision is pursuant to an application originally filed by Western Light on October 24, 1964, wherein it requested that the Commission either grant authorization for the merger as provided in Section 203(a) of the Federal Power Act[1] or, alternatively, that an order be issued disclaiming jurisdiction over the proposed consolidation. Applicant and the staff are the only parties to the case.

The facts concerning the two companies proposed to be merged are set out in full in the Examiner's decision and restatement thereof is not required. By letter dated April 26, 1965, applicant waived the filing of exceptions to the initial decision. Staff, on May 4, 1965, although indicating some reservation in regard to the Examiner's rationale underlying his recommended approval of the merger insofar as it is to be used "as a full exposition of the standard against which future merger applications are to be measured," likewise concluded that it does not except to the decision in this case. By a further letter dated May 7, 1965, applicant advised that the staff's statement did not affect its waiver of exceptions.

---

*Initial decision appears on p. 1151.

[1] 49 Stat. 849, 16 U.S.C. 824(b).

We agree with the finding made by the Examiner and with our staff, for the reasons sufficiently stated in the decision, that each of the named corporations is a "public utility" within the meaning of that term as used in the Federal Power Act and that, under the requirement of Section 203(a), the merger cannot lawfully be effected without our authorization and approval. The evidence clearly establishes that the facilities of both Western Light and Westgas are owned and operated for the transmission and sale at wholesale of electric energy in interstate commerce. By these facts alone the companies are jurisdictional and the provision of the Act controlling mergers is applicable to them.

We further agree with the ultimate finding that the proposed merger is consistent with the public interest and should be approved. As to this aspect of the decision, however, we believe that a more complete discussion of the underlying problem presented by the case is necessary.

As the Examiner's decision notes, the instant merger proposal differs from the usual applications of this class upon which the Commission has been called to pass, in that it proposes to merge two Class A public utilities operating in different states under circumstances where their nearest reasonable junction points are approximately 150 miles apart and no immediate physical interconnection is contemplated. As indicated in our order setting this matter for hearing, this circumstance presents an important issue as to the proper standard for passing on merger applications, pursuant to our authority under Section 203 of the Federal Power Act.

Section 203 merely provides that "No public utility shall * * * merge or consolidate [its] facilities * * * with those of any other person [unless] the Commission finds that the proposed consolidation, acquisition, or control will be consistent with the public interest", and there is little in the way of a gloss on the quoted language contained in the legislative history of Section 203 itself, or in our previous opinions. The Commission's responsibility under this section, however, must obviously be evaluated in the light of the broader context of which Section 203 of the Act is a part, namely, the 1935 Wheeler-Rayburn legislation[3] directed to curing abuses of public utility operation which had developed during the twenties and early thirties. Specifically, the Commission's responsibilities must be considered as forming an integral part of the federal utility regulation pattern adopted by that legislation, along with the provisions of Title I of the Wheeler-Rayburn Act which gave to the Securities and Exchange Commission plenary authority with respect to the regulation of public utility holding companies.

One of the primary objectives of the Wheeler-Rayburn Act was the provisions of Section 11 of Title I (15 U.S.C. 79k), under which the SEC was directed to take action to require the breakup and simplification of existing holding companies' systems to insure that any remaining holding company system would constitute an "integrated public utility system." Under Section 9 of the Act (15 U.S.C. 79i), no new holding company system was to be authorized which was not an "integrated public utility system." "Integrated public utility system" was in turn defined in Section 2(a)29(A) as follows:

> As applied to electric utility companies, a system consisting of one or more units of generating plants and/or transmission lines and/or distributing facilities, whose utility assets, whether owned by one or more electric utility companies, are physically interconnected or capable of physical

---

[3] Public Utility Act of 1935, 49 Stat. 803, *et seq.*

> interconnection and which under normal conditions may be economically operated as a single interconnected and coordinated system confined in its operations to a single area or region, in one or more States, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation;

The SEC has held that under this test more than a "mere possibility of interconnection at a future time" is required before it will permit a holding company to own the stock of two operating companies which are not interconnected with one another. See *General Public Utility Corp., et al.*, 32 SEC 807, 825; 37 SEC 28, 32.

As indicated, this Commission's authority to approve the merger of two existing public utilities is couched in somewhat broader terms. But it is clear that in exercising our authority over mergers we cannot ignore the standards underlying the parallel regulation of holding companies and that we should not approve a merger involving a substantial period of operation of two isolated systems unless the record clearly indicates that the immediate benefits of the merger outweigh the detrimental effect of a single ownership of two isolated utility systems particularly where, as here, they are located in different states and presently participating in separate pooling and other coordination efforts. Whatever validity the Ninth Circuit's opinion in *Pacific Power & Light Company* v. *Federal Power Commission*, 111 F. 2d 1014, may otherwise have, it is clear that in such a situation a showing of positive benefit to counteract the detrimental consequences of one-company ownership of two unconnected utility systems is essential. And this showing cannot be limited to the types of minor savings in overhead which any merger will provide.

We agree, however, with staff counsel that on balance the present proposal can be said to be consistent with the public interest even under these more vigorous standards. We reach this conclusion largely on the basis of the evidence of record indicating that the present consummation of the merger will have a positive effect upon the acceleration of effective interconnection not only between the two parts of the resulting system (thus making possible central operation and single area planning of a sophisticated variety) but between the electric utilities in Kansas and Colorado in general. There are real difficulties in effectuating interconnection in this area, resulting from the fact that the intervening area in western Kansas and eastern Colorado is sparsely populated and has little in the way of industrial load. The merger of two principal private utilities at both ends of this gap, and the strengthened financial position that the resultant company will occupy *vis-a-vis* the other utilities in Kansas and Colorado, should provide a real impetus to the development of effective interties at an earlier period than would otherwise be the case. Nor is this merely a theoretical advantage of the proposed merger; the testimony of the witnesses for the applicant made clear that the merged company will in fact devote its efforts to the earliest possible implementation of this objective.

We understand why the applicant could not positively guarantee that the foregoing consequences would result from the merger. Nevertheless, we agree with staff and the Examiner that we should not rest simply on the possibilities that the interconnection will be made and the coordination which has been discussed will occur. For this reason we adopt the Examiner's finding that the merger should be expressly conditioned upon the merged company's continuing to conduct studies of methods for accelerating the complete interconnection and coordination of the two parts of its system, and reporting to the Commission biennially the results of such planning as well as upon its obligation, on or after January 1, 1970, to take such action to interconnect its facilities as the Commission may order after notice and opportunity for hearing. We also agree with the condition which the Examiner inserted at the request of the staff under which, at least pending such full interconnection and coordination, the merged company will be required to maintain separate accounts for the two parts of its utility system to facilitate informed regulation by the regulatory authorities, including this Commission, which will have cognizance over its operations.

The Commission finds:

(1) Western Light & Telephone Company, Inc. is a corporation organized and existing under the laws of the State of Kansas with its principal office at Great Bend, Kansas.

(2) Western Power & Gas Company is a corporation organized and existing under the laws of State of Delaware with its principal office at Lincoln, Nebraska.

(3) Western Light and Westgas each own and operate facilities for the transmission and sale at wholesale of electric energy which is transmitted in interstate commerce and consumed outside of the state in which it was generated. Each is, therefore, a public utility within the meaning of that term as used in the Federal Power Act.

(4) Western Light and Westgas are each members of, interconnected with, dependent upon and operate in synchronism with interstate power pools which are further organized into an integrated and coordinated interstate electric system. The wholesale sales of electric energy made by Western Light and Westgas of electric energy received from these coordinated systems are sales for resale in interstate commerce and subject to the jurisdiction of the Commission.

(5) The transmission facilities of Western Light, including its interconnections with the Interconnected Systems Group as well as its independent and separate interconnection with the Southwest Public Service Company, and the transmission facilities of Westgas, including its interconnection with the Pacific Northwest Power Pool, are in addition to and do not include facilities used for generation of electric energy, or facilities used in local distribution or only for the transmission of electric energy consumed wholly by the transmitter.

(6) The acquisition by Western Light of the facilities of Westgas upon the terms and conditions specified in the application and subject to the provisions of this order is consistent with the public interest as provided in Section 203 of the Federal Power Act.

The Commission orders:

(A) The merger of the facilities of the Western Power & Gas Company into the facilities of the Western Light & Telephone Company, Inc. is hereby authorized upon the terms and conditions as set out in the application, subject to the provisions of this order.

(B) The Western Light & Telephone Company, Inc. shall enter upon its records the transaction herein authorized and the facilities and properties herein referred to as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) The survivor company, Western Power & Gas Company, Inc., shall maintain in conformity with the Uniform System of Accounts Prescribed for Public Utilities and Licensees, supplemental accounts in scope and form, satisfactory to the Commission, designed to show separately: the electric plant depreciation reserve, operating revenue, operating expenses, depreciation, taxes, and return on investment, which would be involved in any determination of the merged company's cost of service for the system areas formerly served by (i) Western Light & Telephone and (ii) Southern Colorado Power Division of Western Power & Gas Company.

(D) The Western Power & Gas Company, Inc., shall submit on or before January 1, 1966, and thereafter at biennial intervals, unless relieved of such obligation by further order of the Commission, comprehensive reports of studies and plans for the proposed Hugoton generating plant and the physical interconnection, directly or through interconnections with interstate suppliers, of the two parts of its electrical system. It is further directed to contact the Southwestern Public Service Company to explore the feasibility of its utilization of that Company's system and the proposed transmission line from Midway Substation in Colorado, to Amarillo, Texas for interconnecting the two parts of its system on an emergency basis and shall include the results of such studies in its report to be filed on January 1, 1966. It shall take such action to interconnect directly or indirectly the two parts of its electric power system as the Commission may determine is required by the public interest, after notice and opportunity for further hearing, provided that no such action shall be required to be taken prior to January 1, 1970, nor place any undue burden upon it, or compel the enlargement of its generating facilities or impair its ability to render adequate service to its customers.

(E) This authorization shall expire unless the merger herein authorized is consummated within 90 days from the date of issuance of this order.

(F) Upon consummation of the proposed merger, applicant shall report such fact to the Commission within 10 days, together with the date of the effectiveness thereof.

(G) The initial decision and order issued in the proceeding on April 22, 1965, as modified by the Opinion herein, is adopted by and as the decision of the Commission, to be effective as of the date of issuance of this order.

(H) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON AN APPLICATION UNDER SECTION 203 OF THE FEDERAL POWER ACT TO MERGE FACILITIES

(Issued April 22, 1965)

FRAZEE, *Presiding Examiner:*

This proceeding originated from an application filed on October 20, 1964, as subsequently amended and supplemented, by the Western Light & Telephone Company, Inc. (Western Light) for authorization, pursuant to Section 203 of the Federal Power Act, to merge with the Western Power & Gas Company (Westgas), or a disclaimer by the Federal Power Commission (Commission) of jurisdiction over the proposed merger.

Notice of Western Light's application was duly published in the Federal Register on November 5, 1964, 29 F.R. 15002, notifying all persons interested to file their petitions or protests with the Commission on or before November 20, 1964. None were received by the Commission.

As required by Section 203(a) of the Federal Power Act, the Commission gave written notice of the filing of Western Light's application to the Delaware Public Service Commission, the Kansas State Corporation Commission, the Iowa State Commerce Commission, the Missouri Public Service Commission, the Colorado Public Service Commission, the Nebraska State Railway Commission, the South Dakota Public Utilities Commission, and to the Governor of each of these States.

Copies of their orders approving the proposed merger were filed with the Commission by the Kansas State Corporation Commission on November 25, 1964, by the Colorado Public Service Commission on December 2, 1964, and by the Missouri Public Service Commission on December 7, 1964.

The Commission issued an order on February 15, 1965, fixing the date of the hearing to commence on March 9, 1965. The hearing was convened on that date and an opportunity was afforded all proper parties desiring to do so to offer evidence, and a substantial volume was offered and received during the two days of hearing. Further, those desiring to do so were authorized to file briefs.

The applicant, Western Light, is a corporation organized under the laws of the State of Kansas and has its principal office at Great Bend, Kansas. Western Light is engaged in generating, transmitting, distributing, and selling electric energy in 33 counties in central and southwestern Kansas. It retails electric energy to some 53,135 customers in 144 communities and it sells electric energy at wholesale to 13 municipalities and to 12 cooperatives. Western Light also furnishes telephone service to 5 communities in Kansas, 12 communities in Iowa, and 25 communities in Missouri. In addition to the electric and telephone service, Western Light furnishes natural gas service in 11 communities and water service in 5 communities in Kansas.

Westgas is a corporation organized under the laws of the State of Delaware and has its principal office at Lincoln, Nebraska. Westgas is engaged (through its Southern Colorado Power Division) in generating, transmitting, distributing and selling electric energy at retail to 51,283 customers in 43 communities and at wholesale to 2 municipalities and an association of cooperatives in a contiguous area covering parts of 7 counties in southeastern Colorado. Westgas also owns and operates natural gas distribution properties serving 69 communities in Nebraska and South Dakota. In addition to its electric and natural gas properties, Westgas owns all, or part, of the common stock of three telephone companies: Central Telephone Company, Southeastern Telephone Company, and Worthington Telephone Company. These telephone companies own and operate 176 exchanges located in the States of Florida, Illinois, Minnesota, Nevada, North Carolina, Virginia, and Wisconsin.

Western Light and Westgas have entered into an Agreement of Merger, dated September 17, 1964, under which Westgas will merge into Western Light, which will then change its name to the Western Power & Gas Company, Incorporated, a Kansas corporation. Under the Agreement of Merger, the shares of common stock of Western Light outstanding immediately prior to the merger will be split in the ratio of four shares for three shares. After the Western Light stock split and after the merger, each share of Westgas and each share of Western Light will represent one share of the surviving corporation, the Western Power & Gas Company. Also, upon the effectiveness of the merger, each outstanding share of preferred stock of Westgas shall be converted into a share of stock in the surviving corporation at the same par or stated value and with the same rights and privileges as the shares had prior to the merger. The surviving corporation will acquire all assets of Westgas and will assume its liabilities for outstanding debt, including its various classes of debt securities.

The proposed merger differs from the usual merger proposals of electric systems in that Western Light and Westgas have no previous operational relationship with each other, their nearest reasonable junction point, or points of interconnection, are approximately 150 miles apart and, under current circumstances, an immediate interconnection would not be practical. The nearest reasonable junction points are between the Southern Colorado Power Division of Westgas in southeastern Colorado and that of Western Light in southwestern Kansas. No investor owned electric utility presently operates between these two points of possible interconnection. The eastern Colorado area is served by rural cooperative lines and by municipal utilities.[1] The Southern Colorado Power Division of Westgas is interconnected with the rural cooperatives and, through them, with the municipals. (See Ex-5.) It sells electric energy at wholesale to the cooperatives and the municipals. The western Kansas area, from the Western Light terminus to the Colorado line, is also served by rural cooperatives and by municipals that are directly, or indirectly through others, interconnected with Western Light from whom they purchase electric energy at wholesale.

The evidence shows that Western Light normally operates its system interconnected to and synchronized with the Interconnected Systems Group which is, in turn, connected to and operated in synchronism with the Pennsylvania, New Jersey and Maryland (PJM) and CANUSE. (Ex. 17.) This integration of electric systems covers roughly the eastern half of the United States and a portion of Canada and has a combined generating capacity of approximately 149 gigawatts (149 million kilowatts). As an integrated member of the Interconnected System Group, Western Light currently has a generating capacity of 250,000 KW and it is anticipated that additional generating capacity will be necessary by 1968 or 1969 as its annual load growth varies from 6% to 13%.

The record also shows that Westgas, through its Southern Colorado Power Division, is a member of the Colorado Power Pool and normally operates its system interconnected to and synchronized with that Pool, which is, in turn, connected to and operated in synchronism with the Rocky Mountain Power Pool, which is connected to and operates in synchronism with the Pacific Northwest Power Pool. The Rocky Mountain and Pacific Northwest Power Pools have combined generating capacity of approximately 17 gigawatts. The current generating capacity of the Southern Colorado Division of Westgas is, in the aggregate, approximately 105,000 Kw but it has an anticipated need for an additional 44,000 Kw by 1969 since the annual load growth is between 5% and 6%. It presently has no firm plans for procuring this generating capacity. Ties presently connect the Pacific Northwest-Rocky Mountain Pool to the Pacific Southwest-New Mexico Pool on an experimental basis, which is expected to become firm in the near future. The Pacific Southwest Power Pool and the New Mexico Power Pool, which does not include Southwestern Public Service, are interconnected and synchronized and have a combined generating capacity of approximately 20 gigawatts.

The record clearly indicates that Western Light is operating in synchronism with and dependent upon the interconnected power systems in the eastern part of the United States and Westgas is operating in synchronism with and dependent upon the interconnected power systems in the western part of the United States. Therefore, as the Commission said in its Opinion No. 458, issued April 14, 1965, 33 FPC 739, in *Indiana & Michigan Electric Company*, where a public utility participates in and is dependent upon an integrated interstate power pool, all of its wholesale sales for resale are subject to the jurisdiction of the Commission.

Western Light and four other utility companies are presently studying the feasibility of constructing a two million Kw generating plant in the Hugoton gas field of western Kansas. The construction and operation of such a plant would make possible a 345 Kv transmission line extending west from Wichita, Kansas, to Midway, Colorado, with a leg south to Amarillo, Texas, as shown in the National Power Survey. This would enable Western Light and Westgas to tie into this 345 Kv line and thus become an interconnected synchronized system. Witnesses testified the generating plant and interconnection are actively in the planning stage and reasonably foreseeable. The Kansas Corporation Commission anticipates completion of this plant by 1968 or 1969.

---

[1] Lamar Light-Power and the Las Animas Municipal Plant.

The Public Service Company of Colorado is presently constructing a pumped storage plant in Colorado, with another in the active planning stage, to produce peaking power to be fed into and transmitted east over the proposed 345 Kv line.

Western Light is interconnected with the Southwest Public Service Company at a point on the Oklahoma-Kansas border near Liberal, Kansas (Exhibits 3 and 4) where, when the switch is closed, energy flows in either direction depending upon the load. Western Light cannot operate its system in synchronism with the Southwest Public Service Company and the Kansas Gas & Electric Company at the same time. Therefore, when the switch to one of these companies is closed the switch to the other must be open.

Since the application requesting authority to merge was filed pursuant to Section 203(a) of the Federal Power Act, it becomes necessary to determine first, if Western Light and Westgas, or either of them, are public utilities as defined in Section 201(e) of the Act.

The evidence of record clearly shows that Western Light, as well as Westgas, own and operate facilities for the transmission of electric energy in interstate commerce and for the sale of electric energy at wholesale in interstate commerce. Section 201(b) of the Act states "The Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy * * *" *Connecticut Light & Power Co.* v. *Federal Power Commission*, 324 U.S. 515; *Jersey Central Power & Light Co.* v. *Federal Power Commission*, 319 U.S. 61; *State of Wisconsin* v. *Federal Power Commission*, 201 F. 2d 183, cert. den. 345 U.S. 934; *Federal Power Commission* v. *Arizona Edison Co.*, 194 F. 2d 679; *Hartford Electric Light Co.* v. *Federal Power Commission*, 131 F. 2d 953, cert. den. 319 U.S. 741; *Federal Power Commission* v. *Southern California Edison Co.*, 376 U.S. 205. Therefore, Western Light, the applicant herein, and Westgas are public utilities within the meaning of that term as used in the Federal Power Act and subject to the jurisdiction of the Commission.

Section 203(a) of the Act further provides that no public utility shall merge or consolidate its facilities, or any part thereof of a value in excess of $50,000, with those of any other person without first securing an order of the Commission authorizing same. The Act further provides if the Commission finds the proposed consolidation, or merger, to be consistent with the public interest it shall approve the same.

There is ample evidence in the record to demonstrate that the proposed merger is consistent with the public interest. The merger, according to the testimony of witnesses for Western Light and Westgas, will enhance the position of Western Light in the construction and operation of the Hugoton generating plant and the 345 Kv transmission line, and it will, over a period of time, result in many economies of operation by (1) an estimated savings of up to $50,000 (about 15%) annually in financing costs, (2) the electric operations of the two companies will be combined into one company which will enable it to recruit, train and retain more competent personnel, (3) by the elimination of duplication of functions an estimated annual savings of $100,000 in operating costs will be achieved, (4) no jobs will be eliminated but through the process of normal attrition the overall employment will be reduced. The merger would, it was said, permit improved service to customers and greater sales of energy, all of which would in time redound to the benefit of customers in reduced rates.

According to the application, the electric facilities of Westgas to be merged into Western Light are carried on the books of Westgas at their original cost of $41,909,142 at June 30, 1964. Accumulated depreciation of these facilities on this date was $11,645,515. The accounting entries upon the merger will transfer these items to the records of Western Light.

From the record herein it is found and determined that the applicant, Western Light, has made a full disclosure of the facts relevant to the proposed merger and has shown affirmatively that the merger is consistent with the public interest. A showing of positive benefit to the public as a result of the merger is not required by the Act, only that the proposed merger will be consistent with the public interest is sufficient. *Pacific Power & Light Co.* v. *Federal Power Commission*, 111 F. 2d 1014. The Staff of the Commission, at page 26 of their brief, recommend approval of the proposed merger subject to certain accounting and reporting conditions.

The Staff in its brief recommend certain conditions be attached to the approval of the merger. Counsel for Western Light upon receipt of the Staff brief wrote the Examiner on April 7, 1965, saying, "Having received and reviewed the brief of the Commission's staff in the above matter, I am prepared to and do waive the filing of any reply brief." It is assumed, therefore, that the applicant, Western Light, does not object to the conditions proposed by the Staff. On April 12, 1965, Counsel for the Commission's staff wrote the Examiner that the Staff "does not propose to file a reply brief."

Under Section 203(b) of the Act the Commission may grant any merger application upon such terms and conditions as it finds necessary or appropriate to secure the maintenance of adequate service and the coordination in the public interest of facilities subject to the jurisdiction of the Commission.

The accounting and reporting conditions, proposed by the Staff, are found to be necessary and appropriate and are set forth in detail in Ordering Paragraphs (C) and (D) herein.

FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in this proceeding, the evidence adduced and the briefs filed, the Examiner further finds and concludes, in addition to the findings and conclusions hereinabove stated, that:

(1) Western Light & Telephone Company, Incorporated, is a corporation organized and existing under the laws of the State of Kansas with its principal office at Great Bend, Kansas.

(2) Western Power & Gas Company is a corporation organized and existing under the laws of the State of Delaware with its principal office at Lincoln, Nebraska.

(3) Western Light and Westgas each own and operate facilities for the transmission and sale at wholesale of electric energy which is transmitted in interstate commerce and consumed outside of the state in which it was generated. Each is, therefore, a public utility within the meaning of that term as used in the Federal Power Act.

(4) Western Light and Westgas are each members of, interconnected with, dependent upon and operate in synchronism with interstate power pools which are further organized into an integrated and coordinated interstate electric system. The wholesale sales of electric energy made by Western Light and Westgas of electric energy received from these coordinated systems are sales for resale in interstate commerce and subject to the jurisdiction of the Commission.

(5) The transmission facilities of Western Light, including its interconnections with the Interconnected Systems Group as well as its independent and separate interconnection with the Southwest Public Service Company, and the transmission facilities of Westgas, including its interconnection with the Pacific Northwest Power Pool, are in addition to and do not include facilities used for generation of electric energy, or facilities used in local distribution or only for the transmission of electric energy consumed wholly by the transmitter.

(6) The acquisition by Western Light of the facilities of Westgas upon the terms and conditions specified in the application and subject to the provisions of this order is consistent with the public interest as provided in Section 203 of the Federal Power Act.

ORDER

WHEREFORE, *It is ordered*, subject to review by the Commission on appeal, or review by the Commission on its own motion, as provided in its Rules of Practice and Procedure, that:

(A) The merger of the facilities of the Western Power & Gas Company into the facilities of the Western Light & Telephone Company, Incorporated, are hereby authorized upon the terms and conditions as set out in the application, subject to the provisions of this order.

(B) The Western Power & Light Company shall record upon its records the transaction herein authorized and the facilities and properties herein referred to as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) The survivor company, the Western Power & Gas Company, Incorporated, shall maintain in conformity with the Uniform System of Accounts Prescribed for Public Utilities and Licensees, supplemental accounts in scope and form, satisfactory to the Commission, designed to show separately: (a) electric plant depreciation reserve, operating revenue, operating expenses, depreciation, taxes, and return on investment, which would be involved in any determination of the merged company's cost of service for the system areas formerly served by (i) Western Light & Telephone and (ii) Southern Colorado Power Division of Western Power and Gas Company.

(D) The Western Power & Gas Company, Inc., shall submit on or before January 1, 1966, and thereafter at biennial intervals, unless relieved of such obligation by further order of the Commission, comprehensive reports of studies and plans for the proposed Hugoton generating plant and the physical interconnection, directly or through interconnections with interstate suppliers, of the two parts of its electrical system. It is further directed to contact the Southwestern Public Service Company to explore the feasibility of its utilization of that Company's system and the proposed transmission line from Midway Substation in Colorado, to Amarillo, Texas for interconnecting the two parts of its system on an emergency basis and shall include the results of such studies in its report to be filed on January 1, 1966. It shall take such action to interconnect directly or indirectly the two parts of its electric power system as the Commission may determine is required by the public interest, after notice and opportunity for further hearing, provided that no such action shall be required to be taken prior to January 1, 1970, nor place any undue burden upon it, or compel the enlargement of its generating facilities or impair its ability to render adequate service to its customers.

(E) This authorization shall expire unless the merger herein authorized is consummated within 90 days from the date of issuance of this order.

(F) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body.

HARRY W. FRAZEE,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CENTRAL MAINE POWER COMPANY, DOCKET NO. E-7215

ORDER AUTHORIZING ACQUISITION OF FACILITIES

(Issued June 2, 1965)

Central Maine Power Company (Central Maine) filed an application on April 1, 1965, with the Federal Power Commission, and an amendment thereto on May 10, 1965, for an order, pursuant to Section 203 of the Federal Power Act, authorizing the acquisition of electric facilities from Cornish and Kezar Falls Light and Power Company (Cornish).

Central Maine is an electric utility organized under the laws of the State of Maine with its principal business office at Augusta, Maine, and is engaged principally in the generation, purchase, transmission, distribution and sale of electric energy and serves all of the 16 counties in the State of Maine except the counties of Aroostook and Washington. It is interconnected with and interchanges energy with Bangor Hydro-Electric Company and with Public Service Company of New Hampshire. It purchases energy from 10 industrial establishments and one municipal system and supplies energy to five small privately-owned electric systems and three municipal systems.

Cornish is a corporation organized under the laws of the State of Maine with its principal business office at Kezar Falls, Maine, and is engaged in the generation, purchase, transmission, distribution and sale of electric energy, serving all or part of the Towns of Parsonsfield and Cornish in the County of York and the Towns of Porter and Hiram in the County of Oxford and is authorized to serve the Town of Baldwin in the County of Cumberland, all in the State of Maine.

The facilities to be acquired include Cornish's hydroelectric generating station, and its transmission and distribution systems serving about 1100 customers. The properties include a limited capacity 12,470 volt connection with the Central Maine system. According to the application, Cornish's facilities would be fully integrated with Central Maine's operations in contiguous areas and Central Maine will assume full obligations to serve all customers in the area now served by Cornish.

Central Maine's cash consideration for Cornish's facilities will be $320,568 as of December 31, 1964. This amount is based on $486,326 original cost of such facilities, less applicable accumulated provision for depreciation of $229,982, and plus $49,224 for accounts receivable and $15,000 for materials and supplies. The transaction will not result in the creation of an acquisition adjustment.

According to the application, Central Maine's residential rates, with the exception of a few minimal use customers are lower than those of Cornish and its commercial and small power rates based on customer demands are higher than Cornish's rates which are simple block rates. Charges of both systems to large power users are approximately the same.

Based on 1964 consumption, Central Maine estimates that Cornish's residential customers would save 10.6 percent or $9,289 annually if served under Central Maine's rates. However, charges to commercial and small power users of Cornish would be increased 22 percent or $21,120 annually under Central Maine's rates. Central Maine proposes to put its residential and large power rates into effect immediately after completion of the contract as they would result in no change or a reduction in charges. It proposes a transition period of five years during which the Cornish rates to commercial and small power customers would be gradually raised to conform to Central Maine's rates. Charges for street lights would remain on Cornish rates until Central Maine could make arrangements with the communities concerned to put Central Maine's rates into effect.

According to the application, the proposed acquisition of Cornish by Central Maine will integrate the small local electric utility system of Cornish with the larger system of Central Maine which in its turn is interconnected with other utilities in the State of Maine and in New England. Central Maine represents that by reason of its larger size and its interconnection with other utilities, it can insure a more adequate supply of energy to Cornish's customers at generally lower rates than they now pay, avoiding the increase which Cornish's management advises will be necessary were they to continue to serve the area.

Written notice of the application has been given to the Public Utilities Commission of Maine and to the Governor of that State. Notice was published in the Federal Register on April 14, 1965 (30 F.R. 4774), stating that any person desiring to be heard or to make any protest with reference to the application, should on or before April 29, 1965, file with the Federal Power Commission, Washington, D.C., 20426, petitions or protests. No petition or protest or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, owns and operates facilities for the transmission and sale at wholesale of electric energy generated in the State of Maine and consumed outside thereof, and for the transmission and sale at wholesale of electric energy generated in the State of New Hampshire and consumed in the State of Maine, all of which facilities are in addition to, and do not include facilities used for the generation of electric energy, facilities used in local distribution or only for the transmission of electric energy consumed wholly by the transmitter, and Applicant is, therefore, a public utility within the meaning of that term as used in Section 203 of the Federal Power Act.

(2) By the proposed transaction, Central Maine will merge or consolidate its facilities subject to the jurisdiction of the Commission with those of Cornish, another person, within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed acquisition of facilities by Central Maine, as described above, upon the terms and conditions set forth in the application, and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

The Commission orders:

(A) The proposed acquisition by Central Maine of the aforementioned electric facilities, all as described above, is authorized and approved upon the terms and conditions and for the purposes set forth in the application subject to the provisions of this order.

(B) Central Maine shall record the proposed transaction herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) This authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this

Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted by this Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP61-92

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 2, 1965)

On April 13, 1965, El Paso Natural Gas Company (Applicant), filed in Docket No. CP61-92 an application to amend the order of the Commission issued in said docket January 11, 1965, 33 FPC 34, which order authorized Applicant to construct and operate certain facilities and to deliver natural gas to Northern Natural Gas Company (Northern), on an exchange basis, at points in Ochiltree County, Texas, as a part of the previously authorized exchange under Applicant's Rate Schedule Z-1, FPC Gas Tariff, Third Revised Volume No. 2, all as more fully set forth in the application to amend.

Applicant states that the J. W. Daniel "C" Unit No. 1, from which gas was to have been delivered to Northern, is a dry hole, and the W. B. Barnes No. 1 well, which was also the subject of the order issued January 11, 1965, was completed as an oil well and no gas has been delivered therefrom to Northern. Applicant therefore requests that the order of January 11, 1965, be amended to delete therefrom the authorization for the construction and operation of approximately 0.3 mile of 3½-inch O.D. pipeline and appurtenances and approximately 1.4 miles of 4½-inch O.D. pipeline and appurtenances, which were authorized for the respective wells, at an aggregate cost estimated to be $9,377, and to delete therefrom the authorization for the delivery of gas to Northern from such wells.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on April 27, 1965 (30 F.R. 5870). No petition to intervene, notice of intervention, or protest to the granting of the application has been filed.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued January 11, 1965, in Docket No. CP61-92 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued January 11, 1965, in Docket No. CP61-92, be and the same is hereby amended so as to delete therefrom (1) the authorization for the construction and operation of approximately 0.3 mile of 3½-inch O.D. pipeline and appurtenances, and approximately 1.4 miles of 4½-inch O.D. pipeline and appurtenances, authorized to connect the J. W. Daniel "C" Unit No. 1, and W. B. Barnes No. 1 well, respectively, and (2) the authorization to deliver natural gas therefrom to Northern Natural Gas Company, on an exchange basis.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP64–99

FINDINGS AND ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 2, 1965)

On April 12, 1965, El Paso Natural Gas Company (Petitioner) filed in Docket No. CP64–99 a petition to amend the order of the Commission issued in said docket February 18, 1964, 31 FPC 422, which order, as amended August 7, 1964, October 21, 1964 and December 15, 1964, 32 FPC 539, 1152, 1424, authorized Petitioner to participate with Washington Natural Gas Company and Washington Water Power Company in the testing and development of underground natural gas storage in the Jackson Prairie area of Lewis County, Washington (storage unit). By the terms of the above order, as amended, the inventory of gas in the storage unit is limited to 1,400,000 Mcf, and the testing activities are to cease on June 30, 1965 or upon divestiture of El Paso's Northwest Division system, whichever first occurs. The estimated cost of the testing and development authorized in the above orders is $2,100,000, of which $1,796,400 has been expended as of March 1, 1965.

By the subject filing Petitioner seeks further amendment of the order issued in this docket on February 18, 1964, so as to authorize an increase in the volumetric limitation on the inventory of gas in the storage unit of 600,000 Mcf, from the presently authorized 1,400,000 Mcf to 2,000,000 Mcf; and extension of the period during which testing activities may be carried on, through the date of divestiture of Petitioner's Northwest Division system, but not beyond June 30, 1966; and additional authorization for the: (1) construction and operation of approximately 2 miles of 14-inch pipeline, together with appurtenances, replacing existing 4½-inch pipeline; and (2) installation of a portable 600 horsepower compressor and appurtenances, in addition to an existing 300 horsepower compressor, all located at the development site in Lewis County, Washington.

Total estimated cost of the extended program of testing and development is $3,579,000, including the $1,796,400 expended as of March 1, 1965. El Paso's one-third share of such expenditures will be financed with current working funds and by means of short term borrowings.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the petition has been filed.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued February 18, 1964, in Docket No. CP64–99, as amended, be further amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued February 18, 1964, in Docket No. CP64–99, as amended, be and the same is hereby further amended by authorizing:

(1) With respect to Petitioner as an undivided one-third interest participant, the extension of the period for joint testing of the Jackson Prairie Storage Reservoir through the date of divestiture of Petitioner's Northwest Division system, but not beyond June 30, 1966;

(2) An increase in the volumetric limitation on the inventory of gas in the storage unit from 1,400,000 Mcf (at 14.73 psia) to 2,000,000 Mcf (at 14.73 psia); and

(3) The expansion of the testing facilities of the Jackson Prairie Storage Reservoir as proposed, at an estimated total cost of $3,579,000, including the $1,796,400 expended as of March 1, 1965, and increasing Petitioner's commitment to one-third of total expenditures made pursuant to the authorization granted herein.

(B) In all other respects said order, as amended, shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

THE MANUFACTURERS LIGHT AND HEAT COMPANY, CUMBERLAND AND ALLEGHENY GAS COMPANY AND TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. CP64-244

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 2, 1965)

On April 2, 1965, The Manufacturers Light and Heat Company (Manufacturers), Cumberland and Allegheny Gas Company (Cumberland), and Texas Eastern Transmission Company (Texas Eastern), filed in Docket No. CP64-244 a joint petition to amend the order of the Commission issued in said docket March 23, 1965, 33 FPC 598, which order authorized the exchange and delivery of natural gas between Texas Eastern, Cumberland and Manufacturers to permit Texas Eastern to maintain production of natural gas from Accident Field, Garrett County, Maryland, pending conversion of such field into a natural gas storage field and until Texas Eastern was ready to commence injecting natural gas into storage. Authorization for this exchange was granted by the Commission's order of March 23, 1965, for one year from May 1, 1964.[1] Texas Eastern, Cumberland and Manufacturers seek to have the authorization extended for one year from May 1, 1965, all as more fully set forth in the joint application.

Temporary and permanent certificates heretofore issued in said docket have permitted Texas Eastern to maintain production from Accident Field while acquiring a substantial portion of the royalty interests in the natural gas reserves remaining in the reservoir. Texas Eastern does not expect to conclude its royalty purchasing program by May 1, 1965. The additional year will also provide Texas Eastern with an additional supply of gas for injection into the field when injection operations commence and will assist Manufacturers in meeting its system requirements and at the same time receive a small buildup of winter delivery volumes from Texas Eastern.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on April 15, 1965 (30 F.R. 5397). No protest, petition to intervene or notice of intervention has been filed in the proceeding concerning this amendment.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require that the order of the Commission issued in Docket No. CP64-244 on March 23, 1965 be amended so as to extend the period during which Manufacturers, Cumberland and Texas Eastern may exchange natural gas for one year, beginning May 1, 1965, as requested in the joint application to amend filed herein.

---

[1] Temporary authorization for the exchange was granted initially by the Commission's letter-order of April 24, 1964, for one year.

The Commission orders:

(A) The order of the Commission issued on March 23, 1965, is hereby amended so as to authorize the extension of the period during which Manufacturers, Cumberland and Texas Eastern may exchange natural gas for one year, beginning May 1, 1965, as requested in the joint application to amend filed herein.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

MIDWESTERN GAS TRANSMISSION COMPANY, DOCKET NO. CP63-80

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 2, 1965)

On April 7, 1965, Midwestern Gas Transmission Company (Petitioner) filed in Docket No. CP63-80 a petition to amend the order of the Commission issued in said docket on January 25, 1963, 29 FPC 154, which order issued a certificate of public convenience and necessity authorizing Petitioner to construct and operate facilities for the injection of natural gas into certain reservoirs in Illinois and Indiana to evaluate the characteristics of these reservoirs and to determine each reservoir's capability as a natural gas storage reservoir, by authorizing a revised and expanded testing and evaluation program, all as more fully set forth in the petition to amend.

Petitioner proposes to construct and operate additional facilities and to inject additional gas into the reservoirs. Total expenditures for construction and injected gas is proposed to be increased to $8,073,343 and total volume of natural gas to be injected is proposed to be increased to 11,100 MMcf at 14.73 psia. The additional facilities consist of 18 wells, 5.4 miles of pipeline, storage rights of approximately 194 acres, and miscellaneous auxiliary and appurtenant facilities. The proposed limit of 11,100 MMcf of testing gas results from the 4,000 MMcf presently authorized and a proposed increment of 7,100 MMcf.

Petitioner has drilled 30 wells and constructed gathering facilities at a cost of $3,317,686 and has injected 829 MMcf of gas at a cost of $171,847 as of February 28, 1965, pursuant to the authorization in the certificate. The additional volume of 7,100 MMcf of gas and the remaining original volume of 3,171 MMcf of gas, amounting to a total of 10,271 MMcf of gas, is estimated to cost $2,098,400. The cost of the additional facilities is estimated to be $2,485,410. The total cost of the testing and evaluation program is estimated to be $8,073,343, inclusive of $3,489,533 presently expended.

Petitioner has undertaken the testing and evaluation program proposed in its original application and has concluded that the information obtained from the tests indicates that the presently authorized testing program will not allow accumulation of sufficient data with respect to the capabilities and the characteristics of the proposed storage reservoirs to determine the cost of service necessary to offer a definite storage service.

After due notice no petition to intervene, notice of intervention, or protest to the granting of the petition to amend has been received.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the order issuing a certificate of public convenience and necessity to Petitioner in Docket No. CP63–80 should be amended as hereinafter ordered.

The Commission orders:

(A) The order issuing a certificate to Petitioner in Docket No. CP63–80 be and the same is hereby amended by authorizing the construction and operation of additional facilities at a cost of $2,485,410 and the injection of additional volumes of natural gas.

(B) The cost of the completed testing and evaluation program, including 11,100 MMcf of gas, is limited to $8,073,343.

(C) The total volume of natural gas to be injected during the testing program shall not exceed 11,100 MMcf.

(D) In all other respects the order issuing a certificate in Docket No. CP63–80 shall remain in full force and effect.

OPINION NO. 463

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP64–255 (PHASE II)

OPINION AND ORDER MODIFYING AND ADOPTING EXAMINER'S DECISION ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, DECIDING APPEAL, AND DENYING ORAL ARGUMENT

(Issued June 2, 1965)*

Syllabus

1. Evidence of record adequately establishes economic feasibility of pipeline's project. P. 1166.
2. Pipeline's use of average system purchased gas costs in incremental cost study was proper. P. 1166.
3. Incremental cost study in pipeline certificate case normally includes specific costs directly associated with particular service proposed and not general, system-wide costs, except that average gas purchased costs are normally used since system gas supply is considered available to all customers through-out system and no particular reserves are deemed earmarked for any particular service. P. 1166.
4. Pipeline properly excluded cost of uncertificated transmission facilities through which gas from Coyanosa Field would be transported with other gas to its main transmission line since such costs obviously cannot be considered incremental to present project. P. 1166.
5. Proposal to assign so-called average system "gathering" costs and treat them as if they are incremental costs is without support in principal and has been previously rejected. P. 1166.
6. There is no valid basis for recognizing any costs associated with claimed pre-emptions of "cheap expansibility" on Northern's system. P. 1166.
7. Pipeline's unusually aggressive policy of expansion into unserved market areas makes benefits of natural-gas service widely available to public and should be encouraged. P. 1167.

---

*Initial decision appears on p. 1172. Rehearing denied by order issued July 29, 1965, 34 FPC 146.

8. Adhering to general rule stated in *Opinion No. 404*, Commission *requires* written contracts for sales accounting for more than 15 percent of projected branchline revenues without establishing any specific terms therefor. P. 1168.
9. *Concluding* that objections to alleged escape clauses in Northern-Cleveland Cliffs contract do not justify denying or conditioning certificate, Commission *notes* such holding will not foreclose Northern's jurisdictional customers from raising such objections in any future rate case. PP. 1168, 1169.
10. Secretary's rejection of appeal from Examiner's ruling refusing to require pipeline or Commission Staff to explore alternatives, that would possibly be more economic than instant project, upheld; passing on merits of petition, Commission *concludes* that further evidence of such nature is not needed for decision here. P. 1169.
11. Consolidation of pipeline applications is not required by law where the projects are not mutually exclusive. P. 1169.
12. Since Interveners had previously briefed and orally argued major issues before Examiner, they were not unduly hampered by shortening of time for filing exceptions from 30 to 10 days. P. 1171.
13. In a proceeding under Section 7 of the Natural Gas Act, Commission *issues* certificate of public convenience and necessity authorizing initial gas service into Northern Wisconsin and portion of Upper Peninsula of Michigan.

Arthur R. Seder, Jr. for Michigan Consolidated Gas Company

Charles V. Shannon and *Louis Flax* for Michigan Wisconsin Pipe Line Company

F. Vinson Roach, Justin R. Wolf, C. A. Case, Jr., J. C. Osborne, D. B. O'Brien, Jr. and *Stanley Wanger* for Northern Natural Gas Company

Frank J. Kelly and *Hugh B. Anderson* for Michigan Public Service Commission

William E. Torkelson for Public Service Commission of Wisconsin

James R. Fitzharris for City of Escanaba, Michigan

Reuben Goldberg and *George Spiegel* for Michigan Gas and Electric Company

Glen H. Bell for Lake Superior District Power Company

Albert J. Feigen for Peninsula Gas Company

John W. Scott and *Louis L. DaPra* for Minnesota Valley Natural Gas Company

Mark W. Putney for Iowa Power and Light Company

Jerome J. McGrath for Upper Lake Docks Coal Bureau, Inc.

Edward J. Hartman for Iowa-Illinois Gas and Electric Company

George C. Pardee for Metropolitan Utilities District of Omaha

J. F. Kinney for Iowa Public Service Company

Lloyd J. Marti for Western Power & Gas Company

George C. Mastor for Minneapolis Gas Company

John F. Gaston for Iowa Electric Light & Power Company

Ned Willis for North Central Public Service Company

Seymour Tabin for Wisconsin Public Service Corporation

David B. Ward and *Charles R. Brown* for the Staff of the Federal Power Commission

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

BLACK, *Commissioner:*

This is a certificate case, arising under Section 7(c) of the Natural Gas Act, and coming before us on exceptions to the initial decision of Presiding Examiner Francis L. Hall, issued April 12, 1965.[1] Northern Natural Gas Company (Northern) seeks a certificate of public convenience and necessity authorizing it to construct and operate an extension from a point on its main line near Duluth, Minnesota, eastward across northern Wisconsin and into the Upper Peninsula of Michigan, and to sell natural gas in these areas. Related facilities proposed include some 55 miles of 30-inch loop line and 11,400 compressor horsepower at various points along Northern's main line, all as fully described in the Examiner's decision. Total estimated cost of the facilities now proposed is $24,137,800.

Utilizing these facilities, Northern proposes to make new sales totaling some 49,741 Mcf of gas a day (third-year contract-demand volumes) to three distribution companies for resale, and to one industrial customer. The distribution companies would purchase the following volumes: Michigan Gas & Electric Company (MG&E), 8,826 Mcf a day; Lake Superior District Power Company (Lake Superior), 7,079 Mcf a day; and Peninsula Gas Company (Peninsula), 2,176 Mcf a day, for a total of 18,081 Mcf a day; and the industrial customer, Cleveland Cliffs Iron Company (Cleveland Cliffs), would purchase 31,660 Mcf a day (all third-year contract-demand volumes).

The Examiner would grant the authorizations Northern seeks substantially as requested. His decision is supported by the Commission's Staff (except as to two minor points discussed hereinafter), and the Wisconsin and Michigan Public Service Commissions, among others.

A single set of joint exceptions opposing the Examiner's decision was filed by eight of Northern's major existing customers (Interveners). The principal question raised by Interveners is whether Northern's project is economically feasible and would burden them with excessive costs. Other questions they raise include whether we should require the filing of contracts covering sales by certain distribution companies to industrial customers; whether the service to Cleveland Cliffs unduly discriminates against jurisdictional customers; and whether we should decide an appeal filed by Interveners from certain adverse rulings by the Examiner at the hearing.

By way of relief, Interveners ask that Northern's project be denied, or alternatively, that we impose a condition providing in effect that any revenue deficiency caused by Northern's new facilities would not be reflected in the rates of its existing jurisdictional customers. Interveners also request oral argument.

We conclude that the Examiner's decision is correct in most material respects, and that with the few small modifications hereinafter described, it should be adopted by us as our decision in this case. Oral argument was held before the Examiner and no further oral argument is justified.

Economic feasibility of Northern's project.—Northern adduced evidence (Exh. 41 as revised) to show that in the third year of service, the incremental revenues attributable to its project would exceed the incremental cost of service, including a 6.25 percent rate of return, by $115,990. The Examiner accepted Northern's showing as reasonable and in conformity with Commission requirements for establishing economic feasibility.

---

[1] This opinion deals with the remaining authorizations requested by Northern in the consolidated proceeding involving docket Nos. CP64-255 (Phase II), CP65-38, and CP65-39. Northern's Phase I project, which involved extending service into the Mesabi Iron Range area of Minnesota, was separated from the instant Phase II project and was granted by Commission order issued December 21, 1964, 32 FPC 1491. Docket Nos. CP65-38 and CP65-39 involved authorizations sought by Michigan Wisconsin Pipe Line Company and Michigan Consolidated Gas Company for service in the southern part of the Upper Peninsula of Michigan, and were approved by a separate decision by the Examiner which we adopted by order issued April 30, 1965, 33 FPC 912.

As indicated above, Intervener's principal challenge to Northern's project is that it has not been shown to be feasible. Interveners contend that Northern has understated costs and overstated revenues so that instead of excess revenues, Northern would experience a revenue deficiency in the third year of some $1.8 million, and therefore Interveners and other existing customers would be unduly burdened by unjustified costs.

We conclude that the evidence of record, particularly Northern's presentation, adequately establishes the economic feasibility of Northern's project.

We are satisfied that Northern has not understated costs in any material respect. Interveners contend first that Northern understated costs by utilizing a system average of all purchased gas costs at the wellhead or points of purchase, whereas to be consistent with its incremental approach, it should have used incremental purchased gas costs. Furthermore, Interveners allege that Northern completely excluded costs of more expensive gas recently purchased in the Coyanosa Field, Texas.

However, it is clear that Northern's use of average system purchased gas costs in its incremental cost study was proper. An incremental cost study in a pipeline certificate case normally includes the specific costs directly associated with the particular service proposed, and not general, system-wide costs, except that average gas purchased costs are normally used since the system gas supply is considered available to all customers throughout the system and no particular reserves are deemed earmarked for any particular service.[2] Northern's presentation properly follows this approach. As to Coyanosa Field gas, the record indicates that its cost was included in computing the system average purchased gas costs, even though the requested authorizations permitting Northern to receive and transport this gas are still before the Commission.[3] In any event, the omission of such costs would not materially affect Northern's gas supply costs, or the result in this case.

Interveners further contend that Northern erroneously failed to include the cost of delivering gas from the fields to its mainline transmission system, excluding for example some $33,561,000 of facilities for delivering the Coyanosa Field gas to Northern's system.

However, the record shows that Northern included the small amount of gathering costs that are incremental to its new service. It properly excluded the cost of facilities such as the 365-mile, 26-inch pipeline through which gas from the Coyanosa Field would be transported with other gas to Northern's main transmission line, since such costs obviously cannot be considered incremental to Northern's present project. Interveners' proposal to assign so-called average system "gathering" costs and treat them as if they are incremental costs, is without support in principle and has previously been rejected by the Commission.

Additionally, Interveners contend that Northern's new service would pre-empt existing "cheap expansibility" on its system amounting to 8,708 compressor horsepower (the difference between 20,108 horsepower Northern needs and the 11,400 horsepower it would install), so that such capacity will no longer be available to Northern's existing customers who paid for it, but expensive new facilities will be required, resulting in increased rates for existing customers.

However, there is no valid basis for recognizing any costs associated with claimed pre-emptions of "cheap expansibility" on Northern's system. Apart from the fact that Interveners assign no dollar value to such capacity, it is fallacious to assume that only existing customers pay for such capacity so that they exclusively are entitled to its benefit. All customers on Northern's transmission system contribute to the cost of system facilities of which this capacity is part, and its fullest utilization should be encouraged so that all may also benefit from it.

---

[2] See *Trunkline Gas Supply Co.*, 8 FPC 250, 257; *Northern Natural Gas Company*, Opinion No. 404, 30 FPC 859.

[3] See *Northern Natural Gas Company*, Docket No. CP65-1, *et al.*, which includes Northern's application to construct and operate facilities to transport Coyanosa Field gas to Northern's main line.

Likewise, we are satisfied that Northern has not overstated its revenues.

Interveners attack principally Northern's estimates of revenues from its estimated third-year contract-demand sale of 31,660 Mcf to Cleveland Cliffs for use in six iron ore benefication plants located near Marquette, Michigan.[4] They contend that Northern erroneously based estimated revenues on the third-year maximum daily volume of 28,160 Mcf per day permitted by the contract (Exh. 64, pp. 7–8), instead of on the 22,000 Mcf minimum Cleveland Cliffs is obligated to purchase, and that Northern further erred in adding 3,500 Mcf per day for estimated volumes for a proposed addition to Cleveland Cliffs' Empire Mine Plant. Also, Interveners point out that Cleveland Cliffs' purchases would account for some 52 percent of Northern's annual third-year sales from the extension, and contend that such a large proportion of industrial sales[5] raises further doubts as to the project's feasibility and at least justifies imposing the protective condition summarized at the outset of this opinion.

Considering all the circumstances, we think that Northern's reliance on maximum contract-demand, third-year sales is justified. As the Examiner points out, Cleveland Cliffs' indicated savings from using gas instead of fuel oil are at least $600,000 a year, and such savings give the company a strong incentive to take the maximum volumes permitted, and indeed, probably eventually to increase the maximum, as the contract permits. Inclusion of the 3,500 Mcf for the Republic Plant addition seems justified in view of the probability that construction will be completed by 1967. Further, the record indicates that in the event Cleveland Cliffs does not purchase all its estimated volumes, other markets will. As to the large proportion of industrial sales proposed, it must be kept in mind that Northern is a seasoned utility with many years of profitable operations, and that the entire 16,892,000 Mcf of third-year sales proposed by Northern in this case constitutes less than three percent of Northern's total 1964 sales of approximately 593,600,000 Mcf. Clearly, no material adverse impact is to be anticipated in the unlikely event that Northern's estimates of industrial sales are not fully realized.

Finally, we may point out, as did the Examiner, that Northern follows an unusually aggressive policy of expansion into unserved market areas accessible to its pipeline system, and that, while such a policy involves risks, it also makes the benefits of natural-gas service widely available to the public. As we have previously indicated,[6] such a policy merits encouragement. Considering all the relevant circumstances, including Northern's experience over the years in extending service without detriment to overall system operations, we conclude that Northern's present expansion is adequately supported and should be approved. Also, we are satisfied that Interveners' requested protective condition is unnecessary and should be denied.

In light of the foregoing, no detailed discussion is needed of Interveners' remaining arguments respecting Northern's alleged overstatement of revenues.

---

[4] The distribution companies' proposed sales are fully supported by the record evidence summarized by the Examiner; indeed, their firm sales are not seriously challenged. Certain conditions requested by Interveners respecting their interruptible sales are discussed hereinafter.

[5] Interveners contend that including industrial sales by both Northern and the distribution companies, some 75 percent of third-year revenues would come from industrial sales.

[6] *Northern Natural Gas Company*, Opinion No. 404, 30 FPC 859, 866.

Interveners' contention that the Northern-Cleveland Cliffs contract contains "escape" clauses and other provisions that could reduce Northern's revenues and thereby imperil the feasibility of its project we discuss briefly hereinafter, in connection with Interveners' related argument that the said contract unduly discriminates against jurisdictional customers in favor of Cleveland Cliffs.

Contracts covering certain distribution companies' industrial sales.—Interveners contend that, considering particularly the large proportion of industrial sales involved in Northern's project, the Commission policy in the *Northern* Opinion No. 404 of requiring contracts covering industrial sales accounting for more than 15 percent of the revenues estimated for a particular branch line should be rigorously enforced. Accordingly, they argue that signed, 10-year contracts should be required for Lake Superior's sale to a municipal power plant, which constitutes 38 percent of estimated third-year annual sales on the Bessemer branchline; and for MG&E's sale to the J. C. Worden Plant, which constitutes 64 percent of estimated third-year sales on the Lake Linden-Hubbell branchline.

The general rule stated in our *Northern* Opinion No. 404, 30 FPC at 864 is that firm commitments are required where the contemplated sales appear to have a strong bearing on the feasibility of the project and where there is reason to question whether in fact the sales will be made. We there concluded that, although there was little ground to question that sales would in fact be made, sales which account for more than 15 percent of the projected branchline revenues would require support in the form of written contracts. No specific term for such contracts was established.

We agree with interveners that this rule should apply here. Accordingly, we shall condition our order upon the submission of contracts covering the sales by Lake Superior to the Municipal Power Plant, as well as the sales by MG&E to the J. C. Worden Plant.

The record in this case, including the evidence of indicated savings to the industrial customers from using natural gas instead of other fuels, provides little reason to question that the above-described sales will be made. Therefore, we find no need to specify any particular terms for these contracts.

Interveners' objections to the Northern-Cleveland Cliffs contract.—Interveners contend that the contract covering Northern's sales to Cleveland Cliffs[7] contains numerous escape clauses and other provisions that could reduce the feasibility of Northern's project, and would unduly discriminate against Northern's existing jurisdictional customers and prefer Cleveland Cliffs. We conclude that these objections of Interveners likewise do not justify denying or conditioning Northern's requested certificate.

As to feasibility, certain of the alleged escape clauses, such as the provisions permitting cancellation if authorization in satisfactory form is not received by a certain date (Exh. 64, pp. 13–14, 19), are not escape clauses in the usual sense of permitting cancellation of the contract. Upon receipt of timely and satisfactory authorizations, Cleveland Cliffs is bound to use natural gas for at least ten years and cannot cancel the contract. As noted above, the circumstances in this case make it appropriate to rely on Cleveland Cliffs' maximum contract-demand third-year sales in evaluating the economic feasibility of the project. Thus, the annual minimum bill requirements reflecting a 65 percent load factor do not adversely affect its economic feasibility, and they are otherwise appropriate for the reasons discussed in detail in our recent Opinion No. 453, issued March 9, 1965, in *Northern Natural Gas Company*, Docket No. CP64-228 33 FPC 501. Other provisions of the contract, which, for example, permit Cleveland Cliffs' minimum annual bill to be calculated on an even lower load factor in the event of a strike or other force majeure situation, provide a measure of flexibility appropriate to Cleveland Cliffs' needs and are acceptable in the particular circumstances of this case. In so holding, we note that these findings will not foreclose Northern's jurisdictional customers from raising the Interveners' objections in any future rate case, should fears such as those voiced by Interveners materialize.

---

[7] Northern's service would actually be rendered to six different purchasers which own or have an interest in the six plants, but Cleveland Cliffs is the operator of each plant and all the gas is to be sold pursuant to the terms of a single contract, which is Exh. 64 in the record.

Inquiry into possible alternatives to Northern's project.—Interveners renew their petition filed with the Commission on March 4, 1965, by which they requested that we reverse the action of the Commission's Secretary on February 19, 1965, rejecting their appeal from certain rulings by the Examiner at the hearing. Interveners contend that the Examiner erred in not requiring Northern or the Commission staff to explore on the record alternatives that would possibly be more economic and less burdensome than Northern's present project, arguing that he thereby denied the Commission and the Courts the benefits of a full record for deciding this case. In the alternative, they argued that the instant case should be consolidated with an application recently filed by Great Lakes Gas Transmission Company (Great Lakes) in Docket No. CP65-171, *et al.*, proposing a new pipeline transporting gas from the Western Canada gas fields to Eastern Canadian consumers, and passing through the area Northern proposes to serve.

Having considered Interveners' petition, we concur with the Examiner and the Secretary that, under the rules, no grounds for intermediary appeal to this Commission was presented. Considering the merits of the petition, we conclude that further evidence of possible alternatives from Northern's project is not needed for deciding this case.

We, of course, recognize our obligation to consider available alternatives in determining whether a certificate should be granted. The difficulty we have with this motion is that it is predicated on the assumption that the Great Lakes' project will be constructed as proposed in the application as filed, and within the time limits required by the market circumstances of this record. Further, inherent in the petition is the underlying assumption that the Northern Wisconsin-Upper Peninsula market is unable to support Northern's project. These are assumptions we cannot make.

As to possible alternatives involving facilities owned and operated exclusively by Northern, the record makes clear that Northern's present project reflects a very extensive consideration of all reasonable alternatives, and that the selection of the particular project before us is fully justified by the record. The project is reasonable in location and design and is well adapted to serve the existing and prospective consumers in Northern Wisconsin and the Upper Peninsula on an economic and otherwise satisfactory basis.

As to consolidating the application of Great Lakes with this case, or considering an alternative plan whereby Northern might utilize some of Great Lakes' proposed facilities in bringing gas to its proposed markets, we think that such action is neither required by law nor in the public interest. Consolidation is not required by law since the projects of Northern and Great Lakes are not mutually exclusive under *Ashbacker Radio Corporation* v. *F.C.C.*, 326 U.S. 327, because Great Lakes does not propose any service competitive with that of Northern. Thus, the only reason why we would be required to consolidate the instant application with that of the Great Lakes' application would be if such action were necessary to permit the Commission to consider whether the public interest in bringing service to this new area would better be served through utilization of some of the proposed Great Lakes facilities in lieu of some of those proposed by Northern. We do not so find.

First we take notice of the fact that, at the time Interveners' motion was filed, there were 12 motions to intervene in the Great Lakes proceeding. Thus at the time the Examiner was required to rule on the motion now before us, the outcome of that proceeding, including the probable "in service" date of any project which might be authorized, as well as its nature, was highly uncertain. Moreover, since the close of the record in this proceeding, the Great Lakes project has become subject to even greater uncertainty by virtue of the submission for filing of competitive applications by Midwestern Gas Transmission Company and Michigan Wisconsin Pipe Line Company. Thus it is virtually certain that in no event could final action be taken on the Northern proposal, were such action to be tied to the possibility of utilizing some of the Great Lakes' facilities, in time to be capable of being "in service" by March 1, 1966, the terminal date of obligation to take service from Northern-Cleveland Cliffs. As Interveners recognize, the economic feasibility of the Northern project proposing service to the consumers of the Upper Peninsula, is dependent upon the sale of gas to Cleveland Cliffs. Thus grant of the intervener motion at the very best, involves a risk that the entire project would fail, irrespective of its other merits.

Despite this real risk we might, nevertheless, feel justified in giving further attention to the proposed Great Lakes alternative if we believed that the market potential for the Northern proposal was both marginal and static. However, we are of the opinion that a sound market awaits the Northern project. It is our anticipation, based on persuasive evidence of record, that the gas needs of Northern Wisconsin-Upper Peninsula area will continue to grow once a gas supply is available. At best the so-called Great Lakes alternative as presented can only provide a limited amount of capacity available for serving Northern Wisconsin-Upper Peninsula customers, since the present and future needs of Canadian users of gas will obviously have to be its paramount concern. In contrast, the Northern project will provide ample surplus capacity to meet the reasonably foreseeable needs of this market area. Thus, even assuming Great Lakes, ability and willingness to provide service in this area, or that we could require it to do so, any temporary price advantage resulting from such an arrangement would be offset in large part by the cheap expansibility available in the Northern project. We conclude that it would not be in the public interest to consolidate this proceeding with the Great Lakes' application or otherwise delay its authorization to consider it in connection with the Great Lakes proposal because it would unnecessarily jeopardize a viable project to provide a much needed gas service and because the alternate proposal would at best be a temporary palliative not satisfying the long-term needs of the area.

Alleged unnecessary and unsupported findings of Examiner; Commission action in shortening time for exceptions.—Interveners in their exceptions complain that the Examiner at the hearing and in his decision advanced various observations and views that are unnecessary to decision, are unsupported by the record, and do not furnish the required factual basis for concluding that Northern's project meets the requirements of public convenience and necessity. Most of the criticized statements fall into two categories, as appears on their face. First, some of the Examiner's statements represent his judgment respecting factors and evidence pertinent to decision and are wholly proper. Second, certain statements reflect broad opinions on matters not particularly pertinent to decision but are not harmful because the decision can stand without them. However, the Examiner's statement that (*infra*, p. 1182), "Great Lakes apparently hopes to pick up substantial markets in the United States, otherwise its proposed pipeline would apparently not be economically feasible" goes beyond the permissible limits of judgment or opinion in view of the issues and record in this case, and therefore this statement should be deleted.

Finally, Interveners object to our shortening the time for filing exceptions from 30 days to 10 days, contending that this action prevented adequately briefing their position, denied them a fair hearing, and deprived them of due process.

We are concerned that all parties be afforded adequate opportunity to defend their interests and generally if we change the time permitted by our regulations, it is to extend it. However, in the circumstances of this case, we feel that the opposite course is justified, since it may enable service this coming heating season. We feel that Interveners were not unduly hampered by this action, since they had previously briefed and orally argued the major issues before the Examiner.

Interveners alternative relief.—By way of an alternative relief to the granting of its exceptions, Interveners propose that the Commission attach the following condition to its certificate for these facilities:

> In any future rate proceeding involving Northern, any deficiency in revenues resulting from or occasioned by the construction or operation of the facilities herein authorized shall not be taken into account in computing the cost of service for Northern's jurisdictional facilities certificated prior to this order and shall not be used as support for increased rates to Northern's jurisdictional customers receiving service prior to this order.

The propriety or necessity for such treatment is, of course, a matter which the Interveners are free to raise in any future rate proceeding. On the present record, its fundamental assumption, that Northern's project is of questionable or marginal economic feasibility contravenes our findings here. Accordingly, the condition will be denied.

The Commission further finds:

(1) Northern is a Delaware corporation having its principal place of business in Omaha, Nebraska, and is a "natural-gas company" within the meaning of the Natural Gas Act as the Commission has heretofore found.

(2) The facilities hereinabove described, as more fully described in Northern's application and the record in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Northern is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the facilities and the transportation, sale and delivery of natural gas proposed by Northern are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) The public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Northern's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is hereby issued authorizing Northern Natural Gas Company to construct and operate the proposed facilities and to sell and deliver natural gas as hereinabove described, and as more fully described in Northern's application and the record in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are subject to the following terms and conditions:

(i) Northern shall comply with all applicable provisions of the Commission's Regulations under the Natural Gas Act and specifically with paragraphs (a), (b), (c)(1), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations. The time within which Northern's facilities shall be completed and in actual operation in conformity with Section 157.20(b) shall be 12 months from the date of issuance of this Opinion.

(ii) Northern's certificate shall not become effective, insofar as it authorizes Northern to construct the branch lines for sales by Lake Superior to the Lakehead Pipeline Company and to the municipal power plant at Bessemer, and for the sale by MG&E to the J. C. Worden Plant on the Lake Linden-Hubbell branch line, until Northern submits contracts covering the said sales of natural gas.

(C) This certificate shall not entitle the industrial customers to whom firm deliveries are authorized herein to any priorities to additional gas for meeting any future increases in their requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

(D) Northern shall file a request for an amendment to its certificate to authorize the lower contract demand for Cleveland Cliffs, in the event such contract demand is lower than the maximum volumes herein authorized.

(E) Northern shall, on or before July 31, 1967, file a request for an amendment to its certificate to reduce its total firm sales capacity allocated by Cleveland Cliffs by 3,500 Mcf per day if the "First Addition to the Empire Plant" is not in operation and using natural gas by July 1, 1967.

(F) Within 30 days after being notified in the manner contemplated by Article II, section 3 of the contract between Northern and the Cleveland Cliffs, Northern shall notify the Commission in writing of Cleveland Cliffs' decision to construct the "First Addition to the Empire Plant."

(G) Except as granted hereinabove, the application of Northern filed in Docket No. CP64-255 (Phase II) is hereby dismissed.

(H) The initial decision of the Presiding Examiner issued herein on April 12, 1965, is, to the extent consistent with this Opinion, hereby adopted by the Commission as of the date of issuance of this Opinion, to constitute with this Opinion the Commission's decision in this proceeding.

(I) Except to the extent herein granted, the exceptions filed to the Presiding Examiner's decision, and the appeal from the Examiner's rulings at the hearing are denied.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 12, 1965)

HALL, *Presiding Examiner:*

Involved here is that portion of the application filed by Northern Natural Gas Company (Northern), pursuant to Section 7 of the Natural Gas Act (Act), to extend its pipeline from a point near Duluth, Minnesota across northern Wisconsin and into the northern portion of the Upper Peninsula of Michigan. The new facilities will enable Northern to sell natural gas to three distributors and six iron ore plants operated by the Cleveland Cliffs Iron Company (Cleveland Cliffs).

The Michigan Public Service Commission, Public Service Commission of Wisconsin and the Staff of the Federal Power Commission urge that the certificate of public convenience and necessity requested by Northern be granted.

Northern's application filed April 28, 1964, as supplemented, involved a two-phase construction program. Phase I, to provide natural gas service in the Mesabi Iron Range area of Minnesota, was certificated by order of the Commission issued December 21, 1964, 32 FPC 1491. Phase II, as revised during the hearing to limit Northern's proposed service to areas not competitive with the joint proposal of Michigan Consolidated Gas Company (Michigan Consolidated) and Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) in Docket Nos. CP65–38 and CP65–39, is the subject of this decision.

Phase II, as originally proposed by Northern,[1] was partially competitive with the Michigan Consolidated-Michigan Wisconsin proposal, it being proposed by Northern to serve the competitive area through the construction of what is referred to herein as the Escanaba lateral. Thus there was need for the comparative hearing ordered by the Commission on November 9, 1964.

Near the close of the expedited hearing[2] and in response to a suggestion made by the Examiner, Northern withdrew from the competitive area, stating its willingness to accept a certificate covering the requisite facilities and service in the noncompetitive area of the Upper Peninsula of Michigan as an alternative to its total Phase II project. It took this action after giving consideration to the need of the entire Upper Peninsula and northern Wisconsin for immediate gas service. Northern's proposed distributor in the competitive area, Michigan Gas and Electric Company, concurred in Northern's alternative proposal. Accordingly, the issues now to be decided are narrowed to certificate issues.

The facilities comprising Northern's presently proposed project consist of:[3]

55.1 miles of 30-inch mainline looping of existing mainline transmission system in Kansas and Nebraska;

11,400 additional horsepower compression at existing compressor stations at Mullinville, Kansas and Farmington, Minnesota;

Branchlines extending from Northern's mainline near Duluth, Minnesota, easterly across northern Wisconsin and into the Upper Peninsula:

53.8 miles of 20-inch branchline; 166.9 miles of 16-inch branchline; 109.2 miles of varying, smaller sized branchlines; 25 measuring stations.

---

[1] Phase II originally contemplated that Northern would (1) construct 86.5 miles of 30-inch mainline looping of its existing transmission system; (2) add 15,400 compressor horsepower; (3) extend its mainline 270 miles from a point near Duluth, Minnesota east across Wisconsin and into the Upper Peninsula, one branch terminating at Marquette, Michigan and the other (the Escanaba lateral) at Escanaba and Gladstone, Michigan; and (4) construct some 224 miles of branchlines and 36 measuring facilities of varying sizes. The total estimated cost of that project was $35,715,000 as compared with the $24,137,800 that Northern's present project is estimated to cost with the elimination of the Escanaba lateral and other adjustments.

With its originally proposed Phase II project Northern intended to sell third year contract demand volumes of 66,540 Mcf to three distributors and to Cleveland Cliffs and Hanna Mining Company for the benefication of low grade ores, although at the time it filed its application Northern did not have a contract with either company and was never able to obtain one with Hanna Mining Company. Hanna has agreed to purchase its natural gas requirements from Michigan Consolidated under a five-year commitment.

[2] The hearing covered fourteen days, concluding on February 18, 1965. Numerous interested parties, including a number of existing customers of Northern, intervened in the consolidated proceeding.

[3] Construction of the proposed facilities will provide Northern with a system salable contract demand capacity of 2,066,605 Mcf per day, including 49,741 Mcf per day of contract demand estimated to be required for the additional service here proposed. The adequacy of Northern's gas supply is undisputed.

These new facilities will enable Northern to sell natural gas to (1) three distributor customers, namely, Michigan Gas and Electric Company (for distribution in Marquette, Ishpeming, Negaunee, Houghton, Hancock, Ripley and L'Anse, Michigan), Peninsular Gas Company (for distribution in Calumet, Laurim, Lake Linden, Hubbell and Dollar Bay, Michigan), and Lake Superior District Power Company (for distribution in the Cities of Ashland, Hurley and Montreal, and the Towns of Iron River, Saxon and Kimball in Wisconsin; the Cities of Ironwood, Bessemer and Wakefield, and the Townships of Ironwood and Bessemer in Michigan), and (2) Cleveland Cliffs for use in six iron ore benefication plants operated by it and located near Marquette, Michigan.

The estimated third-year contract demand volume is 49,741 Mcf per day of which 31,660 Mcf per day is intended for Cleveland Cliffs and 18,081 Mcf for the three distributor customers.

Northern proposes to make direct firm sales of natural gas to the iron ore benefication plants operated by Cleveland Cliffs in the amount of 31,660 Mcf per day in the third year of operation of its proposed facilities pursuant to the provisions of a ten-year firm contract which contains no escape clause after service is commenced. Annual sales under this contract in the third year of service are estimated to be 8,874,000 Mcf. The peak day and annual requirements of natural gas of the plants operated by Cleveland Cliffs[4] are supported by reasonable and proper studies of its fuel requirements, it being shown in this connection that the use of natural gas for pelletizing instead of fuel oil will save Cleveland Cliffs at least $600,000 per year and that the cost of converting to natural gas is feasible and reasonable.[5]

While Northern's principal market is Cleveland Cliffs, its other markets are covered by service agreements with three distributors with third year contract demand volumes aggregating 18,081 Mcf:

Distributor	*Third Year Contract Demand (Mcf)*
Lake Superior District Power Company	7,079
Peninsula Gas Company	2,176
Michigan Gas and Electric Company	8,826

These distributor customers have fully supported their ability to finance, the propriety of their engineering designs and the economic feasibility of their respective distribution operations. The history of each distributor and a description of each of their proposed projects will be considered.

Proposals of Northern's Distributors

A. *Michigan Gas and Electric Company.*

Michigan Gas and Electric Company is a long-established electric and gas utility operating distribution properties in both the Lower[6] and Upper Peninsula of Michigan, its net plant, at original cost, being $16,964,054 as of September 30, 1964.

---

[4] Northern proposes service to six different purchasers which either own or have an interest in six separate iron ore processing plants. Since Cleveland Cliffs is the operator of each plant and, because all of the gas is to be sold pursuant to the terms of a single contract, the sales to be made by Northern to these plants are, as a matter of convenience, referred to herein as sales to Cleveland Cliffs.

[5] In their brief, counsel for Northern state that "The significant provisions of [the Cleveland Cliffs] contract are substantially the same as the provisions of the contracts between Northern and Erie Mining Company and Eveleth Taconite Company which were the basis of the Northern project in the Mesabi Iron Range of Minnesota certificated by the Commission in Phase I on December 21, 1964."

[6] In the southwestern portion of the Lower Peninsula of Michigan, Michigan Gas and Electric Company owns and operates local distribution systems from which it provides electric service in a four-county area and natural gas service in fourteen communities, of which the principal ones are Niles, Buchanan, Holland, Zeeland, Dowagiac and Three Rivers.

In the Upper Peninsula area the company has for many years been providing propane-air gas service in Marquette, Ishpeming and Negaunee. In addition to serving these three communities with natural gas it also proposes to distribute natural gas in L'Anse, Hancock, Ripley and Houghton. The estimated third-year investment in new distribution facilities in these seven communities is $2,933,833, and the estimated firm requirements for the third and fourth heating seasons (third full year) are 8,826 Mcf and 11,533 Mcf, respectively. The estimated third-year annual requirements are 3,810,160 Mcf. No challenge has been made to these estimates.

The rate of return estimated for Michigan Gas and Electric Company's project in the third year is about 7.45 percent.

Michigan Gas and Electric Company's present investment at original cost in existing facilities in the Marquette-Negaunee-Ishpeming area is $792,194. Its modern propane-air plant, located in Marquette was designed to enable its use for peak shaving purposes when natural gas becomes available.

At the end of September 1964, the company had 1449 customers using propane-air gas service in the Upper Peninsula. These operations are, however, being conducted at an unavoidable loss because the cost of making propane-air gas precludes any substantial customer additions, and an increase in rates would only produce a loss of customers and larger operating deficits.

The record makes it clear that natural gas service will eliminate the operating deficits which Michigan Gas and Electric Company has incurred to maintain some gas service in the Upper Peninsula, will provide opportunity for a reasonable return to investors, and will provide substantial monetary savings and other benefits to the areas. The spreads between the cost of other fuels and natural gas should permit the estimated sales to be made.

There is every reason to also conclude that the anticipated sales of natural gas by Michigan Gas and Electric Company to interruptible customers will materialize, although the consummation of the company's project is not dependent upon the attachment of such customers and no one of the sales represents 15 percent or more of the branch line revenues. In these circumstances, authorization to Northern to sell natural gas to Michigan Gas and Electric Company does not require a condition that the latter submit contracts covering the proposed sales to interruptible industrial customers. *Northern Natural Gas Company*, 30 FPC 859, 864–865.

B. Lake Superior District Power Company.

Lake Superior District Power Company is an operating public utility supplying electric energy in two counties in the Upper Peninsula of Michigan and eleven counties in northern Wisconsin. Its net utility plant exceeds $25,000,000.

The company's principal office is located in Ashland, Wisconsin. It has a complete operating organization throughout the territory proposed to be served with natural gas, consisting of eleven communities[7] in which distribution facilities estimated to cost $2,884,891 will be constructed. The estimated peak day and annual requirements for the eleven communities are:

---

[7] Lake Superior District Power Company proposes to provide natural gas service in the Cities of Ashland, Hurley, and Montreal, Wisconsin, the Town of Iron River in Bayfield County, Wisconsin, and the Towns of Saxon and Kimball in Iron County, Wisconsin; the Cities of Ironwood, Bessemer, and Wakefield in Michigan, and the Townships of Ironwood and Bessemer in Gogebic County, Michigan.

Peak day (contract demand)				Annual requirements		
1st year	2d year	3d year	4th year	1st year	2d year	3d year
4,226	6,119	7,079	7,634	2,607,273	3,105,900	3,453,064

The peak day and annual requirements appear to be reasonable and attainable. They are based upon an analysis of climatological data for the areas involved and analysis of present fuel use of a representative sample of customers.

The company's market analysis indicates that it will make the following rates of return on its projected gas utility property: first year, 5.6 percent; second year, 7.2 percent; third year, 7.9 percent.

A substantial portion of the estimated volume of annual sales is attributable to four large interruptible customers proposed to be served, namely, Bay Front electric generating station (owned and operated by Lake Superior District Power Company), Marathon Corporation (which operates a papermill in Ashland), Lakehead Pipe Line Company,[8] and the municipal power plant at Bessemer. While none of these interruptible loads are required to make Lake Superior's project feasible, each will achieve substantial savings by converting, to the extent anticipated, to the use of natural gas. In fact, so great are the savings to be realized that it clearly appears that the four industrials cannot afford not to convert to natural gas on an interruptible basis.[9] Moreover, the use of valley gas in the Bay Front electric generating station should redound to the benefit of the company's electric customers for the savings involved in the use of natural gas are to be passed on to such customers under rate schedules containing provisions for automatic adjustment of retail rates.

In connection with the proposed lateral to serve the Lakehead Pipe Line Company, Staff counsel point out that Northern proposes to expend $16,695 to construct this lateral to be used solely in making deliveries to Lakehead. Since the economic feasibility of this lateral is totally dependent upon the sale to Lakehead, the certificate issued herein will require that, insofar as it authorizes Northern to construct and operate the Lakehead lateral, it shall not become effective until such time as Northern submits a signed contract covering the sales of natural gas which Lake Superior District Power Company proposes to make to the Lakehead.

C. *Peninsular Gas Company.*

Peninsular Gas Company owns and operates an integrated propane-air gas distribution system which serves at retail the Michigan communities Calumet, Laurium, Lake Linden, a portion of Hubbell, and in most of the areas adjacent thereto.[10] It now proposes to convert its propane-air gas service in these communities (including the whole of Hubbell) to natural gas and to also initiate natural gas service in Dollar Bay, Michigan, in which it will construct and operate a new natural gas distribution system. It is estimated that the company's third-year distribution plant cost will amount to $402,553.

---

[8] It is contemplated that Lakehead Pipe Line Company will use gas in one of its pumping stations for pumping its oil across northern Wisconsin and through the Upper Peninsula of Michigan.

[9] The savings in the Bay Front station (in which the company will convert the largest of its five boilers to burn either natural gas or coal) will be $42,000 a year based on present fuel costs; the annual savings to the Marathon Corporation will amount to $10,214 a year plus $10,000 a year saving in coal and ash handling maintenance; the annual savings to Lakehead Pipe Line Company will be $6,736 plus substantial savings in maintenance expense; and the annual savings to the Bessemer municipal power plant will be $20,289. But as has been indicated, if any part, or all of the interruptible loads fail to materialize, Lake Superior would still have an economically feasible gas operation.

[10] Peninsular Gas Company and its predecessors have supplied various types of gas service continuously since 1907 in Calumet, Laurium, Linden, and Hubbell. It is now serving 688 residential general, 158 house heating, and 67 commercial customers. The economy of the area served is primarily centered around the copper mining industry. However, in recent years the area has become popular as a tourist attraction because of its great scenic beauty.

Peninsular Gas Company's estimated third-year peak day and annual requirements are 2,176 Mcf and 754,528 Mcf, respectively. These estimates were based on recent market surveys of each of the communities to be served, including consideration of climatological statistics, the present and past experience of the company, competitive fuel costs, etc., and appear reasonable. The record shows the company's project to be economically and financially feasible. Its rates will be regulated by the Michigan Public Service Commission.

In addition to firm residential, commercial and industrial service, one industrial customer, namely, the Calumet and Hecla power plant located in Lake Linden, is proposed to be served on an interruptible basis, such sale constituting 56 percent of total third-year annual sales and 25 percent of the total revenues.

The Calumet and Hecla power plant does not distribute or sell power, but generates electric energy solely for use in the Calumet and Hecla copper mining operations. The plant currently consumes about 64,000 tons of powdered coal annually, of which Peninsular Gas Company is proposing to displace about 16,000 tons at this plant with the equivalent of 427,350 Mcf of gas in the third year.

It is expected that the bulk of the interruptible gas for the Calumet and Hecla plant will be available in the summer season, but it is assumed that the company will be able, at least to some extent, to deliver gas to the power plant on most days except during peak periods. It seems clear that, in view of the substantial savings (3½ cents per million Btu) which it is estimated will accrue to the owners of the Calumet and Hecla plant, this sale will materialize.

Economic Feasibility of Northern's Proposal

According to Northern's computations, in the third year of service, the incremental revenues attributable to its proposed project will exceed the incremental cost of service (inclusive of a 6.25 percent rate of return) by $115,990. In this connection, Northern's policy witness testified that he was certain that construction of the project would not "in and of itself cause any rate increase on Northern's system" (Tr. 2053, 2058).

In their joint brief, eight of Northern's existing customers allege that Northern's claim that its present project will produce excess revenues of $115,990 understates third year incremental costs and overstates third-year incremental revenues; that Northern's feasibility test by using the zone differential charged to build branchlines results in a preference to the proposed Upper Peninsula customers and discrimination against Northern's existing customers; and that the terms and conditions of Northern's sales to Cleveland Cliffs are unduly discriminatory and preferential.

Northern's proposed sale to Cleveland Cliffs is hereinafter further considered. The other complaints advanced by Northern's existing customers seem to be no more than an attempt to re-argue matters which they have unsuccessfully pressed on the Commission in prior proceedings. As far as the Examiner is able to determine, the economic feasibility of Northern's present proposal has been tested on a basis which the Commission has many times found to be reasonable and appropriate. That feasibility test uses a rolled-in average cost of gas and an incremental cost attributable to the new, additional proposed facilities.

Northern's project, from the standpoint of branchline feasibility, complies with the principles formulated and approved by the Commission in *Northern Natural Gas Company*, 30 FPC 859, 865–866. The branchlines are clearly feasible without contributions in aid of construction from the proposed distributors.

Northern proposes to provide service to customers located in its existing Rate Zone C pursuant to the rates, terms and conditions of Northern's presently effective CD and R rate schedules on file with the Commission. As to the customers located beyond the geographical limits of Zone C, Northern proposes to establish a new rate Zone D. The proposed rate for Zone D represents a 2-cent differential from Zone C at a 70 percent load factor. One and one-half cents is applied to the demand charge and one-half cent is applied to the commodity charge. The new rates were determined by applying to Rate Zone C the same rate and mileage price differential factors set forth by the Commission in *Northern Natural Gas Company*, 14 FPC 11.

Counsel for the intervener-customers of Northern, in their joint brief and at the oral argument, also made reference to the Commission's decision issued July 31, 1959, 22 FPC 164,[11] which was sustained on review, *Minneapolis Gas Co.* v. *Federal Power Commission*, 278 F. 2d 870, cert. den. 364 U.S. 891. In that case the Commission granted Northern's applications for certificates of public convenience and necessity for the construction and operation of facilities to serve 342 communities, an exceptionally large number, upon the condition that 124 of the communities either make stated capital contributions or be eliminated. In that case Northern presented evidence which showed that with estimated revenues, based on the rates it was then collecting from present customers, and the added costs of providing the new services, the expanded system as a whole would earn during the third year in excess of the 6½ percent rate of return which the rates were intended to produce. Exhibits introduced by the Commission staff witnesses supported Northern's showing of an estimated system-wide rate of return of 6½ percent. In addition, Northern introduced evidence that the incremental rate of return on the new facilities, without reference to Northern's system-wide operations, would be somewhat short of 6½ percent, but would still represent a substantial return on its investment.

The Court of Appeals affirmed the Commission's order, holding, *inter alia*, that the various parts of a public utility system need not and cannot be equally profitable; that the record supported the Commission's finding of economic feasibility and its conclusion that the new service was required by the public convenience and necessity; and that the Commission properly weighed the interests that would be served against those that would be injured and did not strike an arbitrary balance.

Ignoring the instances in which Northern's estimates were lower than later actually experienced, and the further fact that year in and year out Northern's revenues, sales, earnings and number of customers have continued to increase, the intervener customers of Northern complain that some of the third year estimates in the prior proceeding have not materialized. But at the oral argument there was no challenge to the statement of counsel for Northern that the reductions complained of "were actually offset against other increases on the system" (Tr. 2266). At the outset of the oral argument the Examiner had observed (Tr. 2212–2213):

---

[11] The Commission's opinion reported at 22 FPC 164, considered, *inter alia*, Northern's applications filed in Docket Nos. G–17485 and G–18486. In Docket No. G–17485, Northern sought authorization to extend its existing natural gas pipeline system beyond Minneapolis, Minnesota, by constructing and operating 170 miles of pipeline to Duluth, Minnesota, and Superior, Wisconsin, in order to make available for the first time natural gas service to those cities and to 37 other communities located along the route of the proposed extension. In Docket No. G–17486, Northern sought authorization to construct and operate facilities to provide initial natural gas service to 303 communities in Nebraska, South Dakota, Illinois, Iowa, Wisconsin and Minnesota. The original estimated construction cost was approximately $115,000,000.

> The regard of Northern's customers for Northern's activities may rise or fall as events please or displease them. But this is not the measure of Northern. The measure is the success or failure of its policies. Northern must have stayed within safe bounds up to now for each year it reaches new heights in revenues, sales, earnings and number of customers served. The Examiner would be greatly surprised if its intervener-customers do not have a similar record.
>
> Northern can never be stronger than the market it serves. For this reason it must, and it is reasonable to expect that it will, continue to protect its markets be they new or old. If its past policies have made it strong, perhaps they can be depended upon to continue to guarantee its strength. Normally if a company does not continue to move forward it goes back and fails in its mission.

Northern knows itself best and is none the worse for its constant vigor. It makes its decisions on a project by project basis, and it is not astounding that some of its hundreds of estimates have not fully materialized. But the fact that Northern's underestimates have, over the years, more than offset its overestimates affords reason for confidence that its policies and methods have been, and will continue to be, soundly directed. It uses its experiences in proven expansion as springboards to greater efforts. In so doing it recognizes that risk and uncertainty have always been the ordinary incidents of business.

If there be those who begrudge an occasional failure of a community to initially measure up to expectations insofar as the use of gas is concerned, those living in such communities and enjoying improved living and economic conditions are not among them. The lights of their future are now much brighter.

It would seem to the Examiner that the ever widening service areas of pipelines and distributors are not the factors which should cause the greatest concern of those in the industry. Rather it is the possibility that some might be misled by the success of the industry to think that increasing producer prices can continue indefinitely without imperiling that success.

It is becoming more and more the duty of this Commission and all levels of government to give greater heed to the needs of the needy than to the complaints of the comfortable.[12] The public is grateful when its needs are properly met. One of its needs is natural gas. Natural gas should be kept up front and selling. The manner in which it can best be kept up front and selling is a controversial subject, but anything worthwhile usually is.

Financing

Northern's ability to finance its presently proposed project is conceded. It proposes to finance construction through the sale of sinking fund debentures and from internal sources such as reserve accruals, retained earnings and cash on hand.

Northern's Proposed Sale to Cleveland Cliffs

As has peen pointed out (*supra*, pp. 1173—1174), Northern has entered into a ten-year contract with Cleveland Cliffs calling for the delivery of up to 31,660 Mcf of firm gas per day in the third year of service assuming construction of the "First Addition" to the Empire plant which now appears certain (Tr. 1615). Exclusive of the first addition to that plant, the daily contract demand would range between 22,000 and 28,160 Mcf. Under the terms of the contract, (1) Cleveland Cliffs is permitted to gain at least six months of operating experience before it is required to nominate the precise volume for each plant, and (2) there is a 65 percent minimum bill with allowance for down time on strikes. Considering the operating and other problems of Cleveland Cliffs, the contract provisions appear to constitute a reasonable arrangement and to be of the type which is acceptable to the Commission (see *supra*, p. 1174, n. 5).

---

[12] The government can build roads into areas, retrain workers, and do other things, but there are instances in which it cannot force a public utility to render the service that might make the government contribution much more worthwhile. Where there are public utilities willing and able to make the government's efforts more worthwhile, perhaps all possible and reasonable regulatory action should be taken to remove roadblocks from their path.

Although the contract permits Cleveland Cliffs a limited degree of flexibility in establishing the precise volume of contract demand (Exhibit 64, p. 4), Northern's estimates of the annual volumes that will be consumed by Cleveland Cliffs will be unaffected by the modification of the contract demand volumes. In any event, Northern appears to have taken the necessary precautions and is prepared to deal with whatever may develop. It has alternative uses for gas not utilized by Cleveland Cliffs, and some of the estimates of its three proposed distributor-customers in northern Wisconsin and the Upper Peninsula appear to be on the conservative side. Moreover, the prospect for growth in sales in the Upper Peninsula is attractive (Tr. 2050).

The evidence amply supports the estimates of natural gas to be consumed by the plants operated by Cleveland Cliffs, both on a peak day and on an annual basis. The use of natural gas instead of fuel oil in those plants[13] for iron ore processing is estimated to save Cleveland Cliffs approximately $600,000 per year, a saving of great importance because "It is essential that [the] benefication operations be conducted at the lowest possible cost to meet * * * foreign competition" (Tr. 281). As a witness for Cleveland Cliffs further testified:

> * * * The development of the benefication of low grade iron ore was essential to the economic survival of the iron ore industry of the area and was also necessary if Cleveland Cliffs were to continue its operations in that area. Since 1954 the use of domestic direct shipping ores has been steadily declining. The country is fast running out of high quality direct shipping ores. The development of low grade iron ore benefication processes have resulted in the greater utilization of domestic natural resources which otherwise have dwindled in use because of foreign competition. * * * (Tr. 281).
>
> * * * * * * *
>
> Q. Would you explain why Cleveland Cliffs has contracted to purchase natural gas from Northern?
>
> A. Our costs of producing an end product are constantly going up. The use of natural gas which will be purchased from Northern will provide us with a lower cost of fuel which will materially assist us in keeping our costs at a lower level than they otherwise might be. As * * * testified, the annual savings will amount to approximately $600,000. (Tr. 828.)

In connection with the risks that Northern's intervener-customers assert that Northern is taking in regard to its present proposal, it is to be borne in mind that the hazards of this or any other single undertaking does not measure the risk of Northern. Rather such risks, which are simply the natural results of all business freely carried on and against which the law is powerless to afford protection, are properly evaluated only in relation to the results of Northern's total operations. This is the same basis, for example, on which insurance companies and producers of natural gas successfully carry on their businesses. So far as producers are concerned, it is repeatedly pointed out to the Commission that on the average only one wildcat well in nine is successful. The producers, however, live and prosper with this success ratio. So far as Northern is concerned, it is on the basis of past experience and system-wide operations that it continues to emerge as a stronger and stronger company. The Examiner knows of nothing upon which to base a reliable assumption that the onrush of its efforts will outrun its wisdom. Thus is posed the question: Why should a company and its wholesale customers which continue to gain strength on the basis of proven methods change their ways of doing business? In this connection, there comes to mind the old adage oftquoted under similar conditions—"Today is the tomorrow that you worried about yesterday, and it never happened."

---

[13] The six plants operated by Cleveland Cliffs are designed to process low grade iron ore into an acceptable blast furnace feed. The plants and related operations represent an investment of over $150,000,000 and provide employment for some 2500 people. They are capable of producing approximately eight million tons of pellets annually.

The fact is that the profitability of Northern's aggregate operations have been about as rewarding as could possibly have been hoped for. All companies, whether regulated or not, assume "the risk of loss in the hope of proft", *Puget Sound P. & L. Co.* v. *Federal Power Commission*, 137 F. 2d 701, 702, and no regulatory Commission should ever attempt to take the "loss" out of the profit and loss system. The principle has long been established,[14] and has been reasserted in specific reference to the Act, *Federal Power Commission* v. *Natural Gas Pipeline Co.*, 315 U.S. 575, 590. No one can ignore present evidence of progress or seek assurance against the unforeseen, forgetting that risk and uncertainty have always been the ordinary incidents of business. While ordinary business risks may be discouraging to some, Northern sees the plight of the unserved as a challenge and opportunity. It seems committed to service for the benefit of all within economical reach of its pipeline system. This is as it should be, for tomorrow ought not to be defrauded by lack of effort today.

Northern's Proposal Required by Public Convenience and Necessity

The record demonstrates that the natural gas service proposed by Northern in northern Wisconsin and the noncompetitive area of the Upper Peninsula of Michigan is required by public convenience and necessity. The areas to be served are in need of such service which will provide them with new hope and opportunity for a higher level of economic development.

In addition to the many benefits natural gas will bring to the residents of those areas and the attraction natural gas will be to new industry, the development of the economy in those areas will be fostered through the use of natural gas in the copper and iron ore mining and processing industry. While the reserves of high grade ore in the areas have been diminishing at a great rate, there remains tremendous reserves of low grade iron ore. The processing of such low grade iron ore to permit its sale in competition with higher grade iron ore imports and improved domestic taconite ores is greatly facilitated by the use of natural gas.

As one witness testified, "the urgent requirement of the Upper Peninsula is the maximum quantity of gas available for industrial use at the lowest possible price consistent with equitable and beneficial rates for residential and commercial consumers" (Tr. 2065). Another pointed out that "the citizens residing and working in the Upper Peninsula of Michigan feel they have been neglected too long a time, and want in every way possible to improve their economy" (Tr. 215).

Motion Made by Intervener-Customers of Northern

During the hearing, and after extended argument and consideration (Tr. 1044–1122; see also Tr. 2073–2078), the Examiner denied a motion made on behalf of eight intervener-customers of Northern that Northern and the Commission Staff be directed to investigate and submit evidence on supposed alternatives to Northern's initially proposed project—the economic feasibility of which has now been enhanced in that construction of Northern's initially proposed 16-inch lateral to Escanaba has been avoided at savings in construction costs of more than $11,000,000—upon the chance that such evidence might show a better project, or, in the alternative, to recommend to the Commission that the applications of Great Lakes Transmission Company (Great Lakes), Docket Nos. CP65-171, CP65-172 and CP65-173, be consolidated with this proceeding for hearing.[15] The appeal from the Examiner's ruling was rejected by the Secretary of the Commission and a petition is now pending before the Commission to reverse the action of the Secretary.

---

[14] See *Reagan* v. *Farmers' Loan & Trust Co.*, 154 U.S. 362, 409; *Covington and Lexington Turnpike Road Co.* v. *Sanford*, 164 U.S. 578, 596–597; *Los Angeles Gas Co.* v. *Railroad Commission*, 289 U.S. 287, 313.

---

[15] The Great Lakes proposal is still in its application stage. Because of filed interventions—some expressing concern as to the sufficiency of Great Lakes' showing, that application will apparently be the subject of a full blown certificate hearing when ready for consideration. The prior application of Great Lakes, proposing a similar project, had been rejected by the Secretary of the Commission as ambiguous and incomplete.

Great Lakes contemplates importing gas from its parent, Trans-Canada, at a point on the international boundary near Emerson, Manitoba for export to Trans-Canada at other boundary points near St. Clair and Sault Ste. Marie, Michigan. Its proposed pipeline is estimated to cost $192,000,000 and to be about 1,000 miles in length. At present, Trans-Canada is the only customer to be served by Great Lakes.

Trans-Canada has a system, constructed with government assistance, which extends some 2,300 miles from the Province of Alberta eastward via Winnipeg. Kapuskasing and Toronto to Montreal, with branch-lines extending to the United States-Canadian border at two points, namely, Emerson, Manitoba and Niagara Falls. The first branch-line extends from the Alberta-Winnipeg section connecting with the northern portion of Midwestern Gas Transmission Company's (Midwestern) system south of Emerson (16 FPC 466, 468; 20 FPC 575, 588–591). The second connects with the system of Midwestern's parent, Tennessee Gas Transmission Company (Tennessee), at the international boundary near Niagara Falls. Tennessee's system extends from its sources of supply in Texas and Louisiana to the international boundary and the New England area.

Tennessee is currently authorized to import and export gas to Trans-Canada (26 FPC 830). In fact it has pending applications (Docket Nos. CP65-158, CP65-157 and G-1922) which, if approved, will enable it to construct additional facilities and sell and deliver 76,500 MMcf of natural gas to Trans-Canada over a five-year period ending November 1, 1970, the deliveries to be made at a declining rate—25,500 MMcf by November 1, 1966, shrinking to 5,100 MMcf for the twelve-month period ending November 1, 1970.

Part of the Canadian gas received by Midwestern south of Emerson is resold to Michigan Wisconsin (22 FPC 775), the latter being the principal customer of the former. In fact the physical source of gas to be delivered to Michigan Consolidated by Michigan Wisconsin at Menominee is Marshfield, Wisconsin, where Michigan Wisconsin purchases Canadian gas from Midwestern (Tr. 341). It is of interest to point out here that, as shown by Midwestern's applications in Docket Nos. CP64-308, G-18314 and G-18315, now pending for decision, Midwestern has indicated its ability to increase its firm sales of gas to its customers by increasing imports from Canada. It is presently seeking to increase its imports from 204,000 to 222,360 Mcf per day.

The primary purpose of the Trans-Canada system is to transport natural gas from fields in the Province of Alberta to Canadian markets within economic reach of its pipeline, particularly those in eastern Canada where the bulk of Canadian industry is located.

Great Lakes' proposed pipeline through the United States would more or less parallel Trans-Canada's pipeline across Canada and would, in effect, be a looping—over a shorter route—of the Trans-Canada system for additional service to markets served by Trans-Canada in eastern Canada. Great Lakes apparently hopes to pick up substantial markets in the United States, otherwise its proposed pipeline would apparently not be economically feasible. But when Northern requested Great Lakes and Trans-Canada to submit proposals for the sale of gas to Northern "They did not do so." However, by order issued March 23, 1965 in Docket No. CP65-48, 33 FPC 600, the Commission authorized Midwestern to sell to Northern, at an existing interconnection in Minnesota, up to 5,255,200 Mcf of interruptible gas at a price of 24.92 cents per Mcf until December 31, 1965. The deliveries will be made when Midwestern has gas available, in excess of existing requirements and when Northern is able to take it.

While the motion denied by the Examiner expressed an interest in possible avoidance

In denying the motion sponsored by the intervener-customers of Northern the Examiner ruled that Northern's policy witness could be interrogated with reference to the Great Lakes proposal (Tr. 1122). The policy witness later testified that Great Lakes and its parent, Trans-Canada Pipe Lines, Limited (Trans-Canada) "refused to ever submit a contract." He further testified (Tr. 2023):

Q. Did you ask them for a contract?

A. Well, I told them that if they had any proposals to put it in writing in the form of a contract.

Q. And they did not do it?

A. They did not do so.

In this connection, the Commission has had occasion to point out that, when satisfactory commitments are made and supplies are shown to be adequate, Canadian gas should be made available "to the mutual benefit of both United States purchasers and Canadian sellers. This, of course, would be consistent with the policies of cooperation and joint endeavor which have long characterized the relations of this Nation and Canada not only in matters pertaining to the import and export of natural gas but in our general economic relationships and matters of national defense as well" (20 FPC at 584–585).

While interveners may make motions in a Commission proceeding, any motion made must be substantiated by some reasonable promise of success. Where, as here, it is not so substantiated, the motion must be denied (*Cf. South Carolina Public Service Authority* v. *Federal Power Commission*, 170 F. 2d 948, cert. den. 336 U.S. 953). Even assuming that it would have been proper to have directed Northern and the Commission Staff to have studied the alleged alternative proposals, no one attempted to forecast the probable outcome or the period necessary to make the study. Long delay and ultimate failure could easily have been the result. Moreover, to have granted the motion would have frustrated the procedure prescribed at the outset of this proceeding which was designed to and did avoid a protracted hearing. A delay of as much as thirty to sixty days would undoubtedly have delayed natural gas service in the Upper Peninsula for at least a year and required all perfected plans for service this year to be abandoned. In the Examiner's view, any victory causing unjustified delay in Commission action will be found in the Pyrrhic category.

On the basis of the motion made by Northern's intervener-customers, the Examiner was persuaded that the granting thereof would have resulted in a total breakdown of orderly procedure. By denying the motion and following orderly procedure, a record was made demonstrating that the presently proposed projects of both Northern and the Michigan Consolidated-Michigan Wisconsin are economically feasible and capable of being installed and placed in service by the Fall of 1965.

FINDINGS

Based on the evidence of record, the briefs and arguments of counsel, as well as the preceding portion of this decision, it is further found and concluded that:

(1) Northern is a "natural-gas company" within the meaning of the Act and subject to the jurisdiction of the Commission.

(2) The facilities Northern proposes to construct and operate to enable it to provide natural gas service in northern Wisconsin and the non-competitive area

---

of duplication of facilities, such avoidance is not only the element of public interest involved. That interest also requires that the public be served seasonably and on the best possible terms. This means, among other things, that the total price to be paid for gas, including the cost of facilities, must be on the best possible terms and conditions. It goes without saying, of course, that purchasers of natural gas have their own knowledge, experience and ideas as to what constitutes economies and desirable circumstances in which to negotiate.

of the Upper Peninsula of Michigan consist of 55.1 miles of 30-inch mainline looping of its existing mainline transmission system, 11,400 of additional compressor horsepower at stations near Mullinville, Kansas and Farmington, Minnesota, a mainline extension from a point near Duluth, Minnesota east across northern Wisconsin and into the Upper Peninsula consisting of 53.8 miles of 20-inch pipeline and branch-lines consisting of 166.9 miles of 16-inch pipeline, 16.3 miles of 12¾-inch pipeline, 6.7 miles of 10¾-inch pipeline, 55.4 miles of 8⅝-inch pipeline, 11.6 miles of 6⅝-inch pipeline, 10.3 miles of 4½-inch pipeline, 5.5 miles of 3½-inch pipeline, 3.4 miles of 2⅜-inch pipeline plus 25 measuring stations.

(3) The facilities described in paragraph (2) will be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Northern are subject to the requirements of subsections (c) and (e) of Section 7 of the Act.

(4) The estimated cost of the facilities described in paragraph (2) is $24,137,800, such facilities to be used initially to provide the service set forth hereinafter in paragraphs (5) and (6).

(5) Northern proposed to make direct firm sales of natural gas to the iron ore benefication plants operated by Cleveland Cliffs in the amount of 31,660 Mcf per day in the third year of operation of its proposed facilities pursuant to the provisions of a ten-year firm contract which contains no escape clause after service is commenced. Annual sales under this contract in the third year of service are estimated to be 8,874,000 Mcf. The peak day and annual requirements of natural gas of the plants operated by Cleveland Cliffs are supported by reasonable and proper studies of its fuel requirements.

(6) While Northern's principal market is Cleveland Cliffs, its other markets are covered by service agreements with three distributors, namely, Lake Superior District Power Company, Peninsula Gas Company, and Michigan Gas and Electric Company, with third year contract demand volumes aggregating 18,081 Mcf. The peak day and annual requirements of these distributors are supported by reasonable and proper market estimates.

(7) The three distributors named in paragraph (6) have fully supported their ability to finance, the propriety of their engineering designs and the economic feasibility of their respective distribution operations.

(8) Northern has shown that (a) it has an adequate gas supply to render the proposed gas service without adverse effects on its existing customers, (b) that it is able to finance the construction of the project and (c) that its proposed project is economically feasible.

(9) Northern is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Act and the requirements, rules and regulations of the Commission thereunder.

(10) The construction and operation of the proposed facilities and the transportation and additional sales of natural gas by Northern are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(11) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Northern's compliance with all applicable Commission Regulations under the Act and particularly the General Terms and Conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(12) The certificate issued hereinafter will not entitle the industrial customers to which firm deliveries are authorized herein to any priorities or rights to additional gas for meeting any future increases in their requirements at the ex-

pense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

(13) The economic feasibility of the proposed Lakehead lateral is totally dependent on the revenues to be derived from the proposed sales of natural gas which will be made on an interruptible basis to the Lakehead Pipe Line Company.

(14) Public convenience and necessity require Northern to:

(a) File an amendment to the certificate issued hereinafter to authorize any lower contract demand for the Cleveland Cliffs sale should the precise contract demand be lower than the maximum volumes herein authorized.

(b) Promptly file an amendment to the certificate issued hereinafter to reduce its allocated firm sales capacity by 3,500 Mcf per day if the "First Addition to the Empire Plant" is not in operation and using natural gas by July 1, 1967.

(c) Promptly notify the Commission of Cleveland Cliffs' decision to construct the "First Addition to the Empire Mine Plant."

ORDER

WHEREFORE, *It is ordered*, subject to review by the Commission:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Northern to construct and operate the facilities and to sell, transport and deliver natural gas as described hereinabove in paragraphs (2), (5) and (6), all as more fully described in the record in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Northern's compliance with all applicable Commission Regulations under the Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the sales, transportation and deliveries of natural gas authorized hereinabove in paragraph (A) shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Act, within 12 months from the date on which this order issues.

(D) This certificate shall not entitle the industrial customers to whom firm deliveries are authorized herein to any priorities or rights to additional gas for meeting any future increases in their requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

(E) Except as granted hereinabove, the application of Northern filed in Docket No. CP64-255 (Phase II) is hereby dismissed.

(F) The certificate issued herein to Northern, insofar as it authorizes Northern to construct and operate the Lakehead lateral, shall not become effective until such time as Northern submits a signed contract covering the sales of natural gas which Lake Superior District Power Company proposes to make to Lakehead Pipe Line Company on an interruptible basis.

(G) Northern shall file an amendment to the certificate issued herein to authorize any lower contract demand for Cleveland Cliffs should the precise contract demand be lower than the maximum volumes herein authorized.

(H) Northern shall, on or before July 31, 1967, file an amendment to the certificate issued herein to reduce its total firm sales capacity allocated by Cleveland Cliffs by 3,500 Mcf per day if the "First Addition to the Empire Plant" is not in operation and using natural gas by July 1, 1967.

(I) Within 30 days after being notified in the manner contemplated by Article II, section 3 of the contract between Northern and the Cleveland Cliffs, Northern shall notify the Commission in writing of Cleveland Cliffs' decision to construct the "First Addition to the Empire Plant."

FRANCIS L. HALL,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SOUTH PENN POWER COMPANY, DOCKET NO. E-7218

ORDER AUTHORIZING ACQUISITION OF FACILITIES

(Issued June 2, 1965)

South Penn Power Company (South Penn) filed an application on April 14, 1965, with the Federal Power Commission, for an order, pursuant to Section 203 of the Federal Power Act, authorizing the acquisition of electric distribution facilities from Stoufferstown Electric Company (Stoufferstown).

South Penn is incorporated under the laws of the Commonwealth of Pennsylvania and is qualified to do business only in Pennsylvania and has its principal business office at Waynesboro, Pennsylvania. It is a wholly owned subsidiary of the Potomac Edison Company (Potomac Edison), which in turn is a wholly owned subsidiary of Allegheny Power System, Inc. South Penn is engaged in the transmission, purchase, sale at wholesale and distribution of electric energy in the Counties of Adams, Bedford, Franklin, Fulton, and Somerset in southern Pennsylvania. It has no generating capacity and purchases energy to meet all requirements from Potomac Edison.

Electric energy which is generated by Potomac Edison in West Virginia is transmitted by South Penn for sale at wholesale in Pennsylvania and part of this energy is sold at wholesale to Potomac Edison for distribution and consumption in Maryland.

During 1964, South Penn purchased 34,120,627 kwh, sold 20,107,508 kwh at wholesale, and distributed 288,041,543 kwh to some 27,000 ultimate consumers.

Stoufferstown is incorporated under the laws of the Commonwealth of Pennsylvania and is qualified to do business only in Pennsylvania and has its principal office at Chambersburg, Pennsylvania. It was formed in 1922 to distribute electric energy in the part of Guilford Township, Franklin County, Pennsylvania known as Stoufferstown. It has no generating capacity and purchases electric energy to meet all requirements from the Borough of Chambersburg municipal system. Its service area is small, approximately 0.6 of a mile by 1.1 of a mile in size. At the end of 1964 it was serving 454 residential customers and nine commercial customers.

According to the application, South Penn proposes to acquire a portion of Stoufferstown's distribution system, pursuant to the terms and provisions of an agreement between South Penn and Stoufferstown, dated March 1, 1965. The facilities to be acquired by South Penn are electric distribution facilities which are presently used and will continue to be used in local distribution of electric energy in a small portion of Guilford Township, Franklin County, Pennsylvania. The facilities to be acquired constitute approximately one-half of the utility plant owned by Stoufferstown. According to the application, South Penn has agreed to pay $80,000 for these facilities, subject to adjustment for any changes between October 1, 1964 and the closing date. Upon acquisition, South Penn proposes to connect the facilities with its present facilities.

Applicant proposes to acquire only the above part of the Stoufferstown system because the Borough of Chambersburg holds an option to purchase the remaining portion if it is annexed by the Borough within 18 months. If the pending annexation is not successful, Applicant plans to negotiate for the acquisition of the remaining property.

The original cost of the facilities is not known. South Penn estimates that the facilities have a depreciated original cost of $25,443. South Penn's payment of $80,000 for the facilities will, therefore, create an acquisition adjustment of $54,557 which South Penn proposes to eliminate by a charge to Account 435, Miscellaneous Debits to Surplus.

According to the application, the proposed acquisition will be consistent with the public interest because the majority of the consumers affected would pay lower rates for electric service while no customer's electric rates would be increased and the customers affected will receive improved and more reliable service because of South Penn's size and interconnections with affiliated and non-affiliated companies.

Written notice of the application has been given to the Pennsylvania Public Utility Commission and to the Governor of that State. Notice was also published in the Federal Register on April 30, 1965 (30 F.R. 6128), stating that any person desiring to be heard or to make any protest with reference to the application, should on or before May 12, 1965, file petitions or protests with the Federal Power Commission, Washington, D.C., 20426. No petition or protest or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) South Penn, a corporation, owns and operates facilities for the transmission and sale at wholesale of electric energy generated in the State of West Virginia and consumed in the States of Maryland and Pennsylvania, all of which facilities are in addition to, and do not include facilities used for the generation of electric energy, facilites used in local distribution or only for the transmission of electric energy in intrastate commerce, or facilities for the transmission of electric energy consumed wholly by the transmitter, and South Penn is, therefore, a public utility within the meaning of that term as used in Section 203 of the Federal Power Act.

(2) By the proposed transaction, South Penn will merge or consolidate its facilities subject to the jurisdiction of the Commission with those of Stoufferstown, another person within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed acquisition of facilities by South Penn, as described above, upon the terms and conditions and for the purposes set forth in the application subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

(4) The period of public notice given on this application is reasonable.

The Commission orders:

(A) The proposed acquisition by South Penn of the aforementioned electric facilities, all as described above, is authorized and approved upon the terms and conditions and for the purposes set forth in the application subject to the provisions of this order.

(B) South Penn shall record the proposed transaction herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) This authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this

Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted by this Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP64-107

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 2, 1965)

On March 26, 1965, Texas Gas Transmission Corporation (Applicant) filed in Docket No. CP64-107 an application and a supplement thereto on April 16, 1965, to amend the order of the Commission issued in said docket May 26, 1964, 31 FPC 1292, which order, among other things, granted Applicant a certificate of public convenience and necessity authorizing the construction and operation of certain facilities in order to increase contract demand service to then existing customers, all as more fully set forth in the application to amend.

Applicant requests that the Commission amend the referenced order by further authorizing it to install and operate three new delivery points (consisting of three side valves and metering equipment) for an existing customer, Western Kentucky Gas Company (Western), in Henderson, Muhlenberg and Marshall Counties, Kentucky, in order to increase its annual deliveries to Western by an estimated 51,200[1] Mcf beginning in June 1965. No increase in Western's contract demand with Applicant is required for the additional service. The new delivery points will enable Western to serve the communities of Zion, Henderson County, and Luzerne, Muhlenberg County, and a recreational area being developed at Kentucky Lake, in Marshall County, known as the "Ken Bar" development.

Applicant states that Western has received all the requisite local authorizations. The total estimated construction cost of $15,380 will be financed from cash on hand. In light of the small volumes and minor facilities involved, the new service will have no significant effect on Applicant's total system gas supply, expenses and revenue.

Due notice of the subject application to amend has been given by publication in the Federal Register on April 13, 1965 (30 F.R. 4730). No protest, petition to intervene, or notice of intervention has been filed herein.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued May 26, 1964, be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued May 26, 1964, in Docket No. CP64-107 be and the same is hereby amended by authorizing Applicant to construct and operate three side valves and meters for the establishment of three new delivery points, one each in Henderson, Muhlenberg and Marshall Counties, Kentucky, in order to increase its annual deliveries of natural gas to Western Kentucky Gas Company by an estimated 51,200 Mcf beginning in June, 1965.

(B) In all other respects said order shall remain in full force and effect.

---

[1] All volumes at 15.025, psia.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TRANSWESTERN PIPELINE COMPANY, DOCKET NO. CP65-148; CITIES SERVICE GAS COMPANY, DOCKET NO. CP65-150

ORDER AMENDING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 2, 1965)

On April 22, 1965, Transwestern Pipeline Company (Transwestern) and Cities Service Gas Company (Cities) filed a joint petition in Docket Nos. CP65-148 and CP65-150, respectively, requesting the amendment of the Commission's order issued January 28, 1965, 33 FPC 120, in said dockets, which order authorized the construction and operation of facilities and the sale of natural gas by Transwestern, and the construction and operation of facilities and transportation of natural gas by Cities, by extending the time during which Transwestern may sell natural gas to Cities to December 22, 1965, or until Transwestern is ready to commence deliveries under authorization pending in Docket No. CP64-104, whichever is earlier.

The Commission's order issued on January 28, 1965, authorized sales of up to 50,000 Mcf of natural gas per day at 17.5 cents per Mcf for a period of 6 months after the date of first deliveries or until the date Transwestern is ready to commence deliveries under authorization pending in Docket No. CP64-104, whichever is earlier. Initial deliveries commenced on December 22, 1964.

The instant filing is based upon Transwestern's over-supply of gas and Cities' need of additional gas to satisfy the requirements of its summertime load customers and the requirements of summer filling of its storage facilities, and to offset reductions in pipeline capacities due to normal summertime overhaul and maintenance.

Cities had anticipated that the summertime requirements would be satisfied by a commencement of deliveries by Transwestern and Arkansas Louisiana Gas Company under authorization sought in Docket No. CP64-104. However, that proceeding will not be terminated in time for relief during the coming summer.

Transwestern and Cities have entered into a letter agreement dated April 19, 1965, in which the time of the Gas Sale Agreement of November 6, 1964, is extended in conformity with the request in the instant filing.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the certificate of public convenience and necessity heretofore issued in Docket Nos. CP65-148 and CP65-150 be amended as hereinafter ordered.

The Commission orders:

(A) The certificate of public convenience and necessity issued to Transwestern and Cities in the Commission's order of January 28, 1965, in Docket Nos. CP65-148 and CP65-150 be and the same is hereby amended by extending the period of time during which Transwestern may sell and deliver to Cities volumes of natural gas to December 22, 1965, or until Transwestern is ready to commence deliveries pursuant to the authorization pending in Docket No. CP64-104, whichever is earlier.

(B) In all other respects the order in Docket Nos. CP65-148 and CP65-150 shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

INDEPENDENT PRODUCERS OF NATURAL GAS—ANTI-TRIGGERING CONDITIONS IN CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY, DOCKET NO. R-273

ORDER DENYING RECONSIDERATION

(Issued June 2, 1965)

On May 5, 1965, Sun Oil Company (Sun) filed a pleading denominated as an Application for Rehearing of Order No. 296 (30 F.R. 4670, 33 FPC 682.) The Commission through this order, issued on April 5, 1965, promulgated its Tenth Amendment to its Statement of General Policy No. 61-1. The purpose of this amendment to the Statement of General Policy was to advise all persons of the Commission's intent to condition uncontested producer certificates where necessary to prevent subsequent filings which would be at such a high level that they might result in triggering of several price increases. In issuing the order, the Commission made clear that any interested person would be entitled to a hearing both as to the legality and propriety of any anti-triggering condition and as to the validity of the particular area triggering level. The order in other words merely followed our normal course in connection with the Statement of Policy of advising interested parties how we proposed to act in the absence of a timely request for a hearing.

Considered as an application for rehearing, Sun's pleading must be dismissed since it is clear that Order No. 296 is not of the type which comes within the provisions of § 19(b) of the Natural Gas Act or § 1.34 of the Commission's Rules of Practice and Procedure. See *United Gas Pipe Line Co.* v. *F.P.C.*, 181 F. 2d 796 (CADC), certiorari denied, 340 U.S. 827; *Wisconsin* v. *F.P.C.*, 292 F. 2d 753. Sun was not a party to the proceeding leading to the formulation of the order within the meaning of the statute and is not aggrieved thereby. Moreover the order itself is not a final order of the type from which rehearing lies since it imposes no obligation upon Sun or anybody else but merely advises parties as to the intended course of action on the part of the Commission, in passing upon any future certificate applications which Sun or other producers might choose to file.

Considered as a petition for reconsideration of our action of April 5, 1965, Sun's application will be denied. We are, of course, aware that our authority to impose maximum price conditions in any permanent certificate of public convenience and necessity is an issue in the pending Callery case (*Callery Properties, Inc.* v. *F.P.C.*, 335 F. 2d 1004 (CA5), certiorari granted, *sub nom. F.P.C.* v. *Callery Properties, Inc.*, 380 U.S. 931 (March 8, 1965)). While the validity of any price condition imposed by the Commission over the objection of the applicant will therefore necessarily depend upon the outcome of the Supreme Court's decision in that case, we remain of the view that such conditions are an appropriate means of protecting public interest and that there is no basis for distinguishing between the grants made after formal hearing and grants made under the abridged procedures in noncontested proceedings.

Sun suggests that the "practical effect" of the rule is to "impose upon certificate applicants the unreasonable burden of disproving the results of a secret 'Commission study' upon which the 'triggering price' levels are founded". This is not correct. The Commission stated in its order that moratorium levels had been fixed at 2¢ above present initial price ceilings, in the various pricing areas in which triggering levels had not been established in litigated cases, as a reflection of a Commission's study indicating that in such areas "any price more

than 2¢ above the new gas ceiling is likely to result in triggering findings * * *". But we made clear that any applicant upon request would be granted the right to contest the particular triggering level at a hearing on its application. At any such hearing, the triggering level set forth in the table annexed to § 2.56(d) of the Commission's Rules would, in the absence of supporting evidence, have no greater validity presumptive or otherwise than do the various price ceilings set forth as guidelines in the table annexed to subparagraph (a) of § 2.56.

Accordingly, the Commission orders:

The application filed by the Sun Oil Company on May 5, 1965, in the above styled proceeding considered as an application for rehearing is hereby dismissed, and considered as an application for reconsideration is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY, DOCKET NO. CP65-299

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued June 3, 1965)

On March 25, 1965, Central Illinois Public Service Company (Applicant) filed in Docket No. CP65-299 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Trunkline Gas Company (Trunkline) to establish physical connection of its transmission facilities with the proposed facilities of, and to sell natural gas to Applicant for resale and distribution in the Village of Gays, Moultrie County, Illinois, and environs, all as more fully set forth in the application in this proceeding.

Applicant proposes to construct and operate a lateral transmission line from a point on Trunkline's pipeline, approximately three miles northeast of Gays, to said Village. Applicant will also construct and operate the distribution facilities necessary to provide the subject natural gas service to Gays and environs.

The total estimated third year peak day and annual natural gas requirements for Gays are 201 Mcf and 20,850 Mcf, respectively.

The total estimated cost of transmission and distribution facilities for the project is $55,225, which cost will be financed from internal funds.

It appears that Applicant has received appropriate state and local authorization.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on April 7, 1965 (30 F.R. 4508). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) Trunkline Gas Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 29, 1949, in Docket No. G-882 (8 FPC 250).

(2) Applicant, Central Illinois Public Service Company, is a public utility duly organized and existing under the laws of the State of Illinois and is authorized to engage in the business of distributing and selling natural gas within said State.

(3) It is necessary and desirable in the public interest that Trunkline be directed to establish physical connection of its natural gas transmission system

with the proposed facilities of Applicant and to sell and deliver up to 201 Mcf of natural gas per day to Applicant, as set forth in the application and as hereinafter ordered and conditioned.

(4) Applicant should be prepared to receive natural gas from Trunkline within one year from the date of issuance of this order.

(5) The requirement that Trunkline serve Applicant, as proposed, will not place any undue burden upon Trunkline nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Trunkline Gas Company be and it is hereby directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver up to 201 Mcf of natural gas per day to Applicant, all as hereinbefore described and as more fully set forth in the application in this proceeding.

(B) Applicant shall be prepared to receive natural gas from Trunkline within one year from the date of issuance of this order.

(C) Trunkline shall report to the Commission in writing the date of commencement of service to Applicant within ten days thereof.

(D) Trunkline shall execute and file with the Commission a superseding service agreement with Applicant in accordance with the Commission's Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CONSOLIDATED GAS SUPPLY CORPORATION, TEXAS EASTERN TRANSMISSION CORPORATION AND TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP65-296

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 3, 1965)

On March 23, 1965 Consolidated Gas Supply Corporation (Consolidated), Texas Eastern Transmission Corporation (Texas Eastern) and Transcontinental Gas Pipe Line Corporation (Transco) filed in Docket No. CP65-296 a joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities necessary for the additional development and activation of the Leidy Storage Pool, Clinton and Potter Counties, Pennsylvania, all as more fully set forth in the joint application in this proceeding.

Specifically, Applicants proposed to construct and operate an additional 2,000 horsepower compressor unit and related facilities in order to increase the top storage capacity of the Leidy Storage Pool by 5,000,000 Mcf, from 40,000,000 Mcf to 45,000,000 Mcf. The proposed increase in top storage capacity is for the use of Consolidated. Upon completion of the subject phase of development, each of the three Applicants will be entitled to 15,000,000 Mcf of storage capacity. The proposed additional development is pursuant to Amendment No. 5 to the Leidy-Tamarack Transfer and Storage Agreement between the three Applicants, dated March 12, 1965.

The total estimated cost of the proposed facilities is $630,000 which cost, together with the cost of $22,956,000 of facilities heretofore authorized and completed in the Leidy Pool, will be shared under the Transfer and Storage

Agreement in equal one-third shares by the three Applicants. Presently, the costs of the existing constructed facilities are shared by the three parties in proportion to their shares of the developed top storage capacity in said pool. At this time Texas Eastern and Transco are each entitled to 15,000,000 Mcf of top storage capacity and Consolidated is entitled to 10,000,000 Mcf. Consequently, in addition to its one-third share of the cost of the proposed facilities, Consolidated will be obligated in the amount of $1,913,000* for facilities heretofore constructed. Consolidated will finance with such cost from cash on hand.

The proposed increased storage capacity will be used to meet the normal growth in Consolidated's winter market requirements. No new sale or service is proposed in this proceeding.

Petitions to intervene have been filed herein by two distributor companies. In each case, the burden of such filings has been that the petitioners did not request formal hearing in this proceeding and did not object to the hearing and disposition of the subject application under the shortened procedure provided for by the Commission's Rules. Inasmuch as the shortened procedure is being used herein, no further action on said intervention petitions appears necessary.

After due notice, no other petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held May 28, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, New York State Natural Gas Corporation, a New York corporation and a "natural-gas company" within the meaning of the Natural Gas Act, was merged into Hope Natural Gas Company and the name of Consolidated Gas Supply Corporation substituted for that of Hope Natural Gas Company by Commission order issued February 2, 1965 (33 FPC 150).

(2) Consolidated Gas Supply Corporation, a West Virginia corporation with its principal place of business in Clarksburg, West Virginia, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued February 2, 1965 (33 FPC 150).

(3) Applicant, Texas Eastern Transmission Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued October 11, 1947, in Docket No. G–880 (6 FPC 148).

(4) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 18, 1948, in Docket No. G–1143 (7 FPC 145).

(5) The further development and operation of additional underground top storage capacity and the construction and operation of facilities in connection therewith hereinbefore described, as more fully described in the joint application in this proceeding, for use in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

---

* This amount is equal to $\frac{1}{12}$ ($\frac{1}{3}$ less $\frac{10}{40}$) of the $22,956,000 net cost of existing facilities.

(6) The proposed construction and operation of the subject facilities and the proposed further development and operation of additional underground top storage capacity by Applicants are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(7) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(8) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (1), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicants, Consolidated Gas Supply Corporation, Texas Eastern Transmission Corporation and Transcontinental Gas Pipe Line Corporation, to construct and operate the proposed facilities for the further development and operation of additional underground top storage capacity, as hereinbefore described, all as more fully described in the joint application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (1), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CUSHING GAS TRANSMISSION COMPANY, DOCKET NO. CP65-328

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT AND ACCEPTING NOTICE OF CANCELLATION

(Issued June 3, 1965)

On April 9, 1965, Cushing Gas Transmission Company (Applicant), filed in Docket No. CP65-328 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon facilities consisting of approximately 10 miles of 2-inch pipeline and 1 mile of 3-inch pipeline and service rendered thereby to Cities Service Gas Company (Cities Service), and cancellation of Applicant's Rate Schedule No. 1, to be effective on the date of issuance of the order approving abandonment, all as more fully set forth in the application.

Applicant's sole supplier of natural gas, Inland States Gas Transmission Company (Inland) was authorized to abandon service to Applicant by Commission order issued in Docket No. G-3609, *et al.*, on May 11, 1965.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 28, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Cushing Gas Transmission Company, an Oklahoma corporation having its principal place of business in Cushing Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued January 10, 1963 in Docket No. CI63-38.

(2) The facilities proposed to be abandoned, as hereinbefore described and as more fully described in the application herein, are used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities and service is permitted by the public convenience and necessity and approval thereof should be granted as hereinafter ordered.

(4) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Notice of Cancellation of Applicant's FPC Rate Schedule No. 1 be accepted for filing to be effective on the date of issuance of this order.

The Commission orders:

(A) Permission for and approval of the abandonment of the facilities and service hereinbefore described, as more fully described in the application in this proceeding, are hereby granted to Applicant, Cushing Gas Transmission Company.

(B) Applicant shall advise the Commission of the date of abandonment of the facilities and service as authorized in paragraph (A) above within ten days of such abandonment.

(C) Notice of cancellation of Applicant's FPC Rate Schedule No. 1 be and is hereby accepted for filing effective on the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CITY OF ESKRIDGE, KANSAS, DOCKET NO. CP65-241

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued June 3, 1965)

On February 15, 1965, the City of Eskridge, Kansas, (Applicant) filed in Docket No. CP65-241 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Cities Service Gas Company (Cities Service) to establish physical connection of its natural gas transmission facilities with the facilities proposed to be constructed by Applicant, and to sell and deliver natural gas to Applicant for resale and distribution in Eskridge, Allen, Admire and Harveyville, Kansas, all as more fully described in the application.

Applicant proposes to construct and operate a municipal natural gas distribution system within its own borders and the distribution facilities in the cities of Allen and Admire. Applicant will also construct and operate lateral pipeline facilities consisting of (a) 24 miles of $5\frac{9}{16}$ inch O.D. and $4\frac{1}{2}$-inch O.D. pipeline extending northward from a point of intersection with Cities Service's main line in Lyon County, Kansas, to Applicant's town border, (b) 3.7 miles of 2½-inch I.D. pipeline extending westward from a point on Applicant's proposed lateral to the City of Allen, and (c) approximately 5.0 miles of 2-inch I.D. pipeline extending westward from Applicant to the Lake Wabaunsee area where several homes and cabins will be served. Lake Wabaunsee is owned by Applicant.

The City of Harveyville will construct and operate a municipal natural gas distribution system within its borders and approximately seven miles of 3½-inch O.D. lateral pipeline extending from its town border to a point of connection with Applicant's lateral in Wabaunsee County.

The total cost of construction of the facilities to be constructed by Applicant is estimated to be $460,000, of which $20,000 will be contributed by Harveyville in consideration of the additional lateral line capacity required. Harveyville's transmission and distribution facilities, including the $20,000 contribution to Applicant's facilities, are estimated to cost $108,000. The financing of Applicant's and Harveyville's facilities will be by means of Municipal Revenue Bonds to be issued separately by each city.

The estimated volumes of natural gas required to supply Applicant's annual and peak day requirements for the initial three years of proposed operations are stated to be:

	First year	Second year	Third year
Annual (Mcf)	65,500	87,600	109,700
Peak day (Mcf)	845	1,133	1,418

Harveyville will pay Applicant an amount equal to the cost to Applicant of gas purchased from Cities Service for Harveyville, plus a charge of five cents per Mcf for the transportation service.

On March 4, 1965, Cities Service filed a letter with the Commission and stated that it has no objection to providing the requested service.

On March 11, 1965, the State Corporation Commission of the State of Kansas filed a notice of intervention which was withdrawn on April 26, 1965.

Due notice of the filing of the application was filed in the Federal Register on March 4, 1965 (30 F.R. 2831). No other notice of intervention, protest or petition to intervene has been filed.

The Commission finds:

(1) Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G–298 (4 FPC 471).

(2) Applicant is a municipality in the State of Kansas and is authorized to construct and operate facilities to distribute and sell natural gas to inhabitants of the communities along its proposed distribution system.

(3) It is necessary and desirable in the public interest that Cities Service be directed to establish physical connection of its transportation facilities with the facilities proposed by Applicant and to sell and deliver up to 1.418 Mcf of natural gas per day to Applicant, as hereinbefore described and as more fully set forth in the application, as hereinafter ordered and conditioned.

(4) The requirement that Cities Service serve Applicant, as requested, will not place an undue burden upon it nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Cities Service Gas Company be and is hereby directed to establish physical connection of its natural gas transmission system with the facilities to be constructed by Applicant and to sell and deliver up to 1,418 Mcf of natural gas per day to Applicant, all as hereinbefore described in the application.

(B) Cities Service Gas Company shall execute and file with the Commission a service agreement with Applicant in accordance with the Commission's Regulations.

(C) Applicant shall be prepared to receive natural gas from Cities Service within one year from the date of this order.

(D) Cities Service shall notify the Commission of the commencement of service within 10 days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

GAS SERVICE, INC., DOCKET NO. CP65-293

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued June 3, 1965)

On March 23, 1965, Gas Service Inc. (Applicant), of Nashua, New Hampshire, filed in Docket No. CP65-293 an application, as supplemented on April 23, 1965, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Tennessee Gas Transmission Company (Tennessee) to make a physical connection of its transmission facilities with Applicant's proposed 6-inch transmission line and to sell and deliver natural gas to Applicant for resale and distribution through Applicant's existing distribution facilities to residential and commercial customers in the Tilton, New Hampshire area, all as more fully described in the application.

Applicant proposes to construct approximately 23 miles of 6-inch transmission line from the proposed interconnection with Tennessee in Concord, New Hampshire, to its existing distribution facilities in the Tilton area. The existing facilities are now being used to provide manufactured gas service to customers in the area.

The estimated volumes of natural gas required to supply Applicant's annual and peak day requirements for the initial three years of proposed operations are stated to be:

	First year	Second year	Third year
Annual (Mcf)	224,000	238,800	254,200
Peak day (Mcf)	892	990	1,090

The total estimated cost of Applicant's proposed facilities is stated to be $424,496, which will be financed by the sale of bonds.

The Public Utilities Commission of New Hampshire has authorized Applicant to serve the proposed area.

On March 31, 1965, Tennessee filed its answer with the Commission and stated that it has no objections to providing the requested service should the Commission find it to be in the public interest and that it can adequately fulfill the proposal without impairment of existing service to its customers.

Due notice of the filing of the application and opportunity for hearing thereon was published in the Federal Register on April 8, 1965 (30 F.R. 4564). No protest, petition to intervene or notice of intervention has been filed.

The Commission finds:

(1) Tennessee Gas Transmission Company, a Delaware corporation with its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued July 15, 1947 in Docket No. G–910 (6 FPC 777).

(2) Applicant is a public utility company in the State of New Hampshire and is authorized to construct and operate facilities to distribute and sell natural gas to inhabitants of the communities along its distribution system.

(3) It is necessary and desirable in the public interest that Tennessee be directed to establish physical connection of its transportation facilities with the facilities proposed by Applicant and to sell and deliver up to 1,090 Mcf of natural gas per day to Applicant, as hereinbefore described and as more fully set forth in the application, as hereinafter ordered and conditioned.

(4) The requirement that Tennessee serve Applicant, as requested, will not place an undue burden upon it nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Tennessee Gas Transmission Company be and is hereby directed to establish physical connection of its natural gas transmission system with the facilities of Applicant and to sell and deliver up to 1,090 Mcf of natural gas per day to Applicant, all as hereinbefore described and as more fully described in the application.

(B) Tennessee shall execute and file with the Commission a service agreement with Applicant in accordance with the Commission's Regulations.

(C) Applicant shall be prepared to receive natural gas from Tennessee within one year from the date of this order.

(D) Tennessee shall notify the Commission of the commencement of service within 10 days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

GAS UTILITY DISTRICT NO. 1 OF VERNON PARISH, LOUISIANA, DOCKET NO. CP65–229

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued June 3, 1965)

On January 29, 1965, Gas Utility District No. 1 of Vernon Parish, Louisiana (Applicant) filed in Docket No. CP65–229 an application, together with supplements thereto filed February 23 and April 5, 1965, respectively, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Tennessee Gas Transmission Company (Tennessee) to establish physical connection of its natural gas transmission facilities with the facilities proposed to be constructed by Applicant, and to sell and deliver natural gas to Applicant for resale and distribution in the communities of Pitkin and Cravens, Louisiana, and to citizens of the southeastern section of Vernon Parish, Louisiana, all as more fully set forth in the application.

Applicant proposes to construct and operate approximately 6 miles of 2-inch transmission line from Tennessee's facilities to the communities of Pitkin and Cravens, to connect with distribution systems to be constructed and operated in the said communities, and nearby areas. The estimated total cost of the proposed project is $175,000, and will be financed by the issuance of 30-year gas revenue bonds bearing six percent interest; proposed to be purchased by a New Orleans investment firm.

The total estimated volumes of natural gas required to meet Applicant's annual and peak day requirements for the initial three-year period of proposed operations are stated to be:

	First year	Second year	Third year
Annual (Mcf)	19,397	21,397	23,673
Peak day (Mcf)	249	280	306

On March 1, 1965, Tennessee filed an answer to the application filed by the Applicant in this proceeding stating it will render the requested service on order of the Commission.

Due notice of the filing of the subject application and opportunity for hearing thereon have been given by publication in the Federal Register on February 16, 1965 (30 F.R. 2115). No protest, petition to intervene, notice of intervention or request for hearing has been filed in this proceeding.

The Commission finds:

(1) Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued July 15, 1947, in Docket No. G–910 (6 FPC 777).

(2) Applicant, Gas Utility District No. 1 of Vernon Parish, Louisiana, a corporate subdivision of the State of Louisiana having its principal place of business in Pitkin, Louisiana, is legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Tennessee to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicant, and to sell and deliver to Applicant under a service agreement to be executed by Applicant with Tennessee in accordance with the Commission's Regulations, up to 306 Mcf per day of natural gas for distribution and resale as hereinbefore described and as more fully described in the application in this proceeding.

(4) Applicant should be prepared to receive natural gas from Tennessee for distribution by Gas Utility District No. 1 of Vernon Parish, Louisiana, within one year from the date of the issuance of this order.

(5) The requirement that Tennessee serve Applicant, as requested, will not place an undue burden upon it nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Tennessee Gas Transmission Company be and is hereby directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant, as herein described, and to sell and deliver up to 306 Mcf of natural gas daily to Applicant under a service agreement to be executed by Applicant with Tennessee in accordance with the Commission's Regulations, for distribution and resale as hereinbefore described and as more fully described in the application in this proceeding. Such service shall be rendered pursuant to Tennessee's presently filed appropriate rate schedule.

(B) Tennessee shall report to the Commission in writing the date of commencement of service to Applicant within 10 days thereof.

(C) Applicant shall be prepared to receive service as directed herein within one year from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

LAKE SHORE PIPE LINE CO., DOCKET NO. CP65-309

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 3, 1965)

On April 2, 1965, Lake Shore Pipe Line Co. (Applicant) filed in Docket No. CP65-309 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of (1) two segments of 4-inch pipeline, 5,300 feet and 11,900 feet, paralleling an existing 4-inch line extending from Applicant's Courtenay Station in an easterly direction, and a metering station in connection therewith, (2) 64,750 feet of 4-inch pipeline and 82,910 feet of 3-inch pipeline and appurtenant facilities to connect (a) 18 completed wells, (b) 20 projected wells by September 1, 1965, and (c) 23 projected wells for the period between September 1965 and September 1966, all in Erie County, Pennsylvania, all as more fully set forth in the application.

Applicant, an operating subsidiary of the Consolidated Natural Gas Company, is expanding its system in Erie County, Pennsylvania, to provide facilities connecting its system with unattached wells, both completed and uncompleted in the areas of production adjacent thereto.

The total estimated cost of the proposed facilities is $665,000, the cost of which will be financed initially from cash on hand to be replaced from debt or capital financing through the Applicant's parent company.

The Commission issued Applicant a temporary certificate on April 30, 1965, authorizing the construction and operation of 17,000 feet of 4-inch pipeline and the necessary 3-inch lines to attach eighteen shut-in wells, subject to final determination of the application for a certificate of public convenience and necessity.

After due notice, no petition to intervene, notice of intervention, or protest to the granting of the application has been filed.

At a hearing held on May 28, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Lake Shore Pipe Line Co., an Ohio corporation having its principal place of business in Cleveland, Ohio, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued February 13, 1951, in Docket No. G-1236 (10 FPC 22).

(2) The facilities hereinbefore described and as more fully described in the application and exhibits in this proceeding, will be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Com-

mission, and the construction and operation thereof and the transportation of natural gas are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities is required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly (1) Section 157.7(b)(3) of the Commission's Regulations in connection with the attachment of any of forty-three wells to be drilled by September 30, 1966, and (2) the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, Lake Shore Pipe Line Co., authorizing the construction and operation of facilities, as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly (1) Section 157.7(b)(3) of the Commission's Regulations in connection with the attachment of any of forty-three wells to be drilled by September 30, 1966, and (2) the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12 months after September 1966.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

MILWAUKEE GAS LIGHT COMPANY, DOCKET NO. CP65-261

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued June 3, 1965)

On March 1, 1965, Milwaukee Gas Light Company (Applicant) filed in Docket No. CP65-261 an application, as supplemented on April 30, 1965, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) to establish physical connection of its transmission facilities with the facilities to be constructed by Applicant, and to sell and deliver natural gas to Applicant for resale and distribution in the unincorporated village of Freedom, Outagamie County, Wisconsin, as more fully described in the application.

Applicant proposes to construct a distribution system in Freedom and proposes that Michigan Wisconsin construct a measuring station and a portion of a 4-inch transmission main from a point on its present facilities to Freedom, which is a distance of approximately 1.6 miles. The portion of the 4-inch line to be constructed by Michigan Wisconsin is to be determined by the application of its "10-cent formula" and is estimated to be approximately 1.2 miles.

The estimated volumes of natural gas required to supply Freedom's annual and peak day requirements for the initial three years of proposed operations are stated to be:

	First year	Second year	Third year
Annual (Mcf)	31,182	37,158	40,796
Peak day (Mcf)	156	222	256

The total cost of the proposed facilities to be constructed by Applicant is estimated to be $90,394, which will require no special financing.

On April 27, 1965, the Public Service Commission of Wisconsin authorized Applicant to serve the community of Freedom and to construct the proposed facilities, conditioned upon the approval sought by the instant filing. Applicant was granted a franchise by the Freedom Town board on September 29, 1964.

On March 29, 1965, Michigan Wisconsin filed its answer with the Commission and stated that it had no objection (1) to providing the requested service, upon the approval of its application in Docket No. CP65–191, and (2) constructing approximately 1.2 miles of the transmission lateral, within the limits of its "10-cent formula". Michigan Wisconsin's application in Docket No. CP65–191 for a certificate of public convenience and necessity authorizing the expansion during 1965 of the peak day sales capacity of its system by approximately 75,000 Mcf per day was granted by the Commission's order issued in said docket on March 30, 1965.

Due notice of the filing of the application and opportunity for hearing thereon was published in the Federal Register on March 18, 1965 (30 F.R. 3617). No protest or petition to intervene has been filed.

On April 8, 1965, the Public Service Commission of Wisconsin filed a notice of intervention in these proceedings. The notice of intervention stated that no hearing was requested, but the Public Service Commission wished to be able to participate if a formal hearing was held. No other notice of intervention has been filed.

The Commission finds:

(1) Michigan Wisconsin Pipe Line Company, a Delaware corporation having its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order dated November 30, 1946, in Docket No. G–669 (5 FPC 953).

(2) Applicant is a public utility company in the State of Wisconsin and is authorized to construct and operate facilities to distribute and sell natural gas to inhabitants of the community located on its proposed distribution system.

(3) It is necessary and desirable in the public interest that Michigan Wisconsin be directed to establish physical connection of its transportation facilities with the facilities proposed by Applicant and to sell and deliver up to 256 Mcf of natural gas per day to Applicant as hereinbefore described and as more fully set forth in the application, as hereinafter ordered and conditioned.

(4) The requirement that Michigan Wisconsin serve Applicant, as requested, will not place an undue burden upon it nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Michigan Wisconsin Pipe Line Company be and is hereby directed to establish physical connection of its natural gas transmission system with the facilities of the Applicant and to sell and deliver up to 256 Mcf of natural gas per day to Applicant, all as hereinbefore described and as more fully described in the application.

(B) Michigan Wisconsin Pipe Line Company shall execute and file with the Commission a service agreement with Applicant in accordance with the Commission's Regulations.

(C) Applicant shall be prepared to receive natural gas from Michigan Wisconsin within one year from the date of this order.

(D) Michigan Wisconsin shall notify the Commission of the commencement of service within 10 days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP65-335

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 3, 1965)

On April 21, 1965, Natural Gas Pipeline Company of America (Applicant) filed an application in Docket No. CP65-335 pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities for the sale of gas to Iowa Power and Light Company (Iowa Power) for resale, all as more fully set forth in the application.

Applicant proposes to construct and operate the following facilities: (1) One 2-inch side tap, approximately 200 feet of 3-inch lateral and a meter station to sell natural gas to Iowa Power for resale and distribution in the Town of Leighton, Iowa, (2) one 2-inch side tap, approximately 250 feet of 3-inch lateral and a meter station to sell natural gas to Iowa Power for resale and distribution to the Town of St. Charles, Iowa, and (3) one 2-inch side tap, approximately 550 feet of 3-inch lateral and a meter station to sell natural gas to Iowa Power for resale and local distribution in the towns of Lovilia, Bussey and Hamilton, Iowa, and in the unincorporated community of Tracy, Marion County, Iowa.

The total cost of facilities to be constructed by Applicant is estimated to be $53,450, which will be financed with funds on hand.

Iowa Power, an existing customer of Applicant, will provide service in the above communities from the quantities of natural gas which Applicant has heretofore been authorized to sell and deliver to Iowa Power under Applicant's Rate Schedules CD-1 and S-1.

Due notice of the filing of the application was published in the Federal Register on May 5, 1965 (30 F.R. 6296). No protest, petition to intervene, or notice of intervention has been filed in this proceeding.

At a hearing held on May 28, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 13, 1942, in Docket No. G-235 (3 FPC 830).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed transportation and delivery of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Natural Gas Pipeline Company of America, to construct and operate the proposed facilities and to transport and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the transportation and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. RP65-50

ORDER REJECTING PETITION FOR RECONSIDERATION

(Issued June 3, 1965)

The Commission by order issued April 30, 1965, 33 FPC 929, denied the petition filed April 14, 1965 by Natural Gas Pipeline Company of America for reconsideration and withdrawal or termination of the order issued April 2, 1965, 33 FPC 666, instituting an investigation under Section 5 of the Natural Gas Act.

On May 19, 1965, Natural filed a petition for rehearing of our order issued April 30, 1965. Under Section 1.34 of the Rules of Practice and Procedure, a petition for rehearing can be filed only after the issuance of a final decision or order by the Commission. Our order issued April 2, 1965, instituting an investigation and requiring the production of cost and revenue reports is merely procedural and interlocutory. The denial of Natural's petition for reconsideration filed April 14, 1965 did not change the procedural or interlocutory nature of our April 2 order. The petition filed May 19, 1965 is in fact a second request for reconsideration of that order.

Neither the Natural Gas Act nor the Rules of Practice and Procedure provide for consecutive petitions for reconsideration. We have consistently rejected petitions for reconsideration of an order denying reconsideration. *Houston Texas Gas and Oil Corporation, et al.*, Docket No. G–9262, *et al.*, issued April 18, 1957, 17 FPC 542; *Trunkline Gas Company, et al.*, Docket No. G–15394, *et al.*, issued March 26, 1961, 21 FPC 394.

The Commission orders:

The petition filed by Natural Gas Pipeline Company of America on May 19, 1965, is hereby rejected.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

THE OHIO FUEL GAS COMPANY, DOCKET NO. CP64–233

FINDING AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 3, 1965)

On April 10, 1964, as supplemented on June 18 and July 27, 1964, The Ohio Fuel Gas Company (Applicant) filed in Docket No. CP64–233 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain replacement facilities on its existing transmission system in Ohio to enable Applicant to provide increased capacity to serve growing requirements of existing markets and to assure adequate market service, all as more fully described in the application, as supplemented, in this proceeding.

Applicant proposes to construct and operate the following facilities in the State of Ohio:

(1) 1.1 miles of 6⅝-inch pipeline in Sandusky County, replacing 2.0 miles of 3½-inch Line D–71 serving Gibsonburg;

(2) 2.6 miles of 12¾-inch pipeline in Sandusky County, replacing a section of 8⅝-inch Line D–74 serving the Port Clinton-Oak Harbor area;

(3) 4.0 miles of 24-inch pipeline in Seneca and Sandusky Counties, extending Line D–415, looping an additional section of Line D–100 serving Toledo and other markets in northwestern Ohio;

(4) 5.7 miles of 8⅝-inch pipeline in Wyandot County, replacing sections of 6⅝-inch Line D–34 serving Upper Sandusky;

(5) 1.1 miles of 5½-inch pipeline in Wayne County, replacing a section of 3½-inch Line V–243 serving Dalton and East Greenville;

(6) 7.1 miles of 12¾-inch pipeline in Carroll and Stark Counties, replacing 8⅝-inch sections of Lines V and V–20 serving the Alliance market area;

(7) 5.4 miles of 20-inch pipeline in Hardin County, extending Line D–500, looping an additional section of Lines D–322 and D–357 serving the Lima market area;

(8) 2.1 miles of 4½-inch pipeline in Marion County, replacing a section of 8½-inch Line D-213 serving Caledonia;

(9) 1.9 miles of 4½-inch pipeline in Pickaway County, replacing a section of 2⅜-inch and 3½-inch Line A-117 serving Williamsport, and

(10) 4.8 miles of 6⅝-inch pipeline in Athens and Hocking Counties, replacing sections of 4½-inch, 5½-inch and 6⅝-inch Line E-76 serving Nelsonville;

Together with valves, fittings and incidental facilities necessary for practical operation.

Applicant states that the replacement facilities proposed are a part of a program to maintain adequate facilities and service and to provide increased capacity needed to serve increasing requirements of existing markets and to assure adequate market service.

Applicant states that of the pipe proposed to be replaced, a section of Line V-20 will be sold to Columbia of Ohio and the remainder will be salvaged or abandoned in place.

The application shows the total estimated cost of the project to be $1,517,000, which cost will be financed by Applicant's parent, The Columbia Gas System, Inc.

By letter dated September 25, 1964, Applicant was issued a temporary certificate authorizing all of the subject proposal except project No. (7) described above.

Applicant states that it believes that the proposed changes will not result in termination of service to any consumer. The authorization hereinafter granted is without prejudice to the existing rights of customers now served from the affected existing gas transmission lines of Applicant.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application, as supplemented, has been filed.

At a hearing held on May 28, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, The Ohio Fuel Gas Company, an Ohio corporation having its principal place of business in Columbus, Ohio, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of August 21, 1945, in Docket No. G-371 (4 FPC 1033).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, The Ohio Fuel Gas Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c) (4) and (e) of Section 157.20 of such Regulations.

(C) The facilities for Applicant's project No. (7) which have not been authorized by temporary certificate shall be constructed and placed in actual operation within 6 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

PACIFIC POWER & LIGHT COMPANY, DOCKET NO. E-7129

SUPPLEMENTAL ORDER AUTHORIZING ISSUANCE OF PROMISSORY NOTES

(Issued June 3, 1965)

By order issued February 14, 1964, 31 FPC 414, in the above-entitled matter, the Commission, pursuant to Section 204 of the Federal Power Act, authorized Pacific Power & Light Company (Applicant) to issue, pursuant to a Credit Agreement of October 1, 1963 between Applicant and eight banks, unsecured Promissory Notes in the aggregate principal amount of $45,000,000 outstanding at any one time upon terms and conditions set forth in the order, which include, among other things, those set forth in the application, filed September 30, 1963, requesting such authorization. The order, by its terms, provided that the Notes were to be dated as of the dates of the borrowings and they were to mature 11 months after date of issue or on September 30, 1965, whichever shall be earlier.

Pursuant to the above-described authorization, Applicant has issued Notes from time to time and as of the date of the application, all outstanding Notes had been paid.

On March 23, 1965, Applicant filed an amendment to its earlier application, informing the Commission that its Credit Agreement of October 1, 1963 has now been supplemented by a Letter Agreement of March 10, 1965 under which it shall continue to have the right to issue Notes up to $45,000,000 outstanding at any one time, under the same terms and conditions with the extension of maturity date from September 30, 1965 to June 30, 1967. By its amendment to application filed on March 23, 1965 Applicant requested that the authorization granted by the above-mentioned order be extended and modified to the extent necessary to provide that Applicant may issue Notes either as original Notes or renewals thereof up to an aggregate principal amount of $45,000,000 at any one time outstanding, each Note to mature 11 months after date of issue or on June 30, 1967, whichever is earlier.

Applicant states that the Notes are to be issued to furnish temporary financing for the Applicant's construction program, the expenditures for which are estimated to be approximately $49,150,000 for 1965, approximately $40,000,000 for 1966 and approximately $23,200,000 for the first half of 1967. The principal items of expenditure for those years are described as follows: $670,000 for construction of additional transportation and mining facilities at the Dave Johnston Steam Plant in 1965; $1,000,000 in 1966 and $700,000 in the first half of 1967 for its Cherokee, Wyoming Steam Plant Unit No. 1; $4,000,000 in 1965 for commencement of construction of the $20,000,000 Keno Hydroelectric project on the Klamath River; $1,000,000 in 1965 for construction of the Iron Gate Spillway improvements; $700,000 in 1965 for construction of a fish hatchery at the Iron Gate Hydroelectric Development; $4,165,000 in 1965 for completion of the 47.4 mile, 230/500 kv transmission line from Malin, Oregon to Indian Springs, California; $1,320,000 in 1965 for completion of the 35 mile, 230 kv transmission line from Malin, Oregon to Klamath Falls, Oregon; $910,000 in 1965 for completion of the 40 mile, 115 kv transmission line from Bly, Oregon to Lakeview, Oregon; $1,696,000 for completion of the 46.1 mile, 115 kv transmission line from Libby, Montana to Trego, Montana; 4,070,000 in 1965 for completion of the 98 mile, 230 kv transmission line from Enterprise, Oregon to Walla Walla, Washington; $1,260,000 in 1966 for completion of the 36 mile, 230 kv transmission line from Wanapum Switchyard, Washington to North Yakima, Washington; $990,000 for completion of the 29 mile, 230 kv transmission line from Sinclair, Wyoming to the Cherokee Steam Plant, Wyoming; $80,000 in 1965, $200,000 in 1966 and $4,320,000 in the first half of 1967 for construction of the 300,000 kva substation at Malin, Oregon; $1,162,000 for construction of the 150,000 kva North Yakima Substation; $800,000 in 1966 for construction of the 100,000 kva substation at Yellowtail, Montana; $854,000 in the first half of 1967 for construction of the 125,000 kva Dave Johnston Substation at Glen Rock, Wyoming; $17,246,000 in 1965, $20,000,000 in 1966 and $10,542,000 in the first half of 1967 for construction of electric distribution facilities; $1,529,000 in 1965, $1,885,000 in 1966 and $1,000,000 in the first half of 1967 for construction of additions to steam heating, water and telephone facilities; and $5,947,000 in 1965, $5,750,000 in 1966 and $2,800,000 in the first half of 1967 for other plant facilities, surveys and investigations.

According to the application, the Notes are to be discharged with the proceeds from permanent financing. Applicant states that the timing and method of sale of such permanent securities are not presently determinable, however, it is expected that the necessary permanent financing will consist of $30,000,000 of First Mortgage Bonds.

Applicant does not request by its amendment any other changes in the authorization heretofore granted in this matter.

As indicated in the previously mentioned order of the Commission, issued February 14, 1964, notice of this proceeding has been given to the Public Utilities Commission of Idaho, the Public Service Commission of Montana, the Utilities and Transportation Commission of Washington, the Public Service Commission of Wyoming, the Public Utility Commissioner of Oregon and to the Governor of each of those States. Notice has also been given by publication in the Federal Register on October 16, 1963 (28 F.R. 11087), stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest on or before October 25, 1963, with the Federal Power Commission, Washington, D.C., 20426. No protest, petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

Good cause has been shown and it is necessary and appropriate for the purposes of the Act that Paragraph (B) of the Commission's order issued February 14, 1964, be modified as hereinafter provided.

The Commission orders:

(A) Paragraph (B) of the Commission's order issued February 14, 1964, in the above-entitled docket is amended to read as follows:

(B) This authorization is expressly conditioned upon the final maturity of all Notes to be issued pursuant hereto being not later than June 30, 1967.

(B) All other terms and conditions as set forth in Paragraphs (A), (C) and (D) of the aforesaid Commission order issued February 14, 1964, shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SOUTH GEORGIA NATURAL GAS COMPANY, DOCKET NO. CP65-224

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 3, 1965)

On January 25, 1965, South Georgia Natural Gas Company (Applicant) filed in Docket No. CP65-224 an application, as supplemented on March 5 and March 29, 1965, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of natural gas facilities, and the transportation and sale of natural gas, all as more fully set forth in the application.

Applicant proposes to construct and operate approximately 145.5 miles of high-pressure line varying in diameter from 8 inches to 2 inches, extending from a point of connection with Applicant's existing system near Weston, Georgia, to West Bainbridge, Georgia,[1] together with metering, regulating and related facilities necessary for the proposed service.

The proposed facilities will be utilized to provide increased volumes of natural gas to existing customers, and initial firm service to eight new resale customers,[2] and interruptible service to one direct sale industrial customer, Great Southern Land and Paper Company (Great Southern). Third year estimated firm annual and peak day requirements for the eight municipalities are 334,006 Mcf and 4,169 Mcf respectively. The sale to Great Southern is estimated to total 540,000 Mcf annually. Applicant's total firm peak day sales in the 1967-68 heating season are estimated to be 52,886 Mcf.

Total estimated cost of Applicant's proposed facilities is $2,652,617, and will be financed with proceeds from the issuance and sale of First Mortgage Pipe Line Bonds and with cash on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 28, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

---

[1] By order issued February 5, 1965, 33 FPC 185, in Docket No. CP65-156 South Georgia was authorized to construct four miles of 6⅝-inch line from Bainbridge to West Bainbridge, Georgia rendering moot the authorization sought herein for the same facility.

[2] Arlington, Blakely, Colquitt, Cuthbert, Donalsonville, Edison, Ft. Gaines and Shellman, Georgia. By order issued April 12, 1965, 33 FPC 721, in Docket No. CP65-205 South Georgia was authorized to serve Meigs, Georgia rendering moot the authorization sought herein for the same sale.

The Commission finds:

(1) Applicant, South Georgia Natural Gas Company, a Georgia corporation having its principal place of business in Thomasville, Georgia, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of August 3, 1954, in Docket No. G–1915 (13 FPC 666).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed transportation and sales of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and sales of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, South Georgia Natural Gas Company, to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The certificate issued hereby is granted on the express condition that the interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of South Georgia for firm service to its customers.

(D) The facilities hereby authorized shall be constructed and placed in actual operation and the sales of natural gas shall be undertaken, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations, within 18 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SOUTHWEST GAS CORPORATION, DOCKET NO. CP65–333

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 3, 1965)

On April 20, 1965, Southwest Gas Corporation (Applicant) filed in Docket No. CP65–333 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application.

Applicant seeks authority to construct and operate approximately 21 miles of 8⅝ inch O.D. pipeline from a point near Carson City, Nevada, to the north end of Lake Tahoe near the California-Nevada state line for the sale of natural gas to customers of all classes in the States of California and Nevada. The third-year peak day and annual volumes for distribution systems to be served from the proposed facilities are stated to be 4,176 Mcf and 508,000 Mcf, respectively. Shortly following the filing of this application, Applicant proposes to file applications with the state regulatory bodies of California and Nevada for authorization to distribute natural gas in the northern Lake Tahoe area. Estimated cost of the distribution facilities is $1,537,928.

The estimated cost of the proposed facilities is stated to be $727,379, which will be financed from current funds.

Applicant proposes to offer service to its distribution customers under its Schedule G–10, as presently on file with and approved by the Nevada Public Service Commission. These rates will also be offered to the California customers upon approval of this Schedule by the California Public Utilities Commission.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application have been filed.

At a hearing held on May 28, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence including the application and exhibits submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Southwest Gas Corporation, a California corporation having its principal place of business in Las Vegas, Nevada, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued April 14, 1965, in Docket No. CP65–99 (33 FPC 796).

(2) The proposed construction and operation of facilities, transportation and sale of natural gas in interstate commerce as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The proposed construction and operation of facilities, transportation and sale of natural gas in interstate commerce as hereinbefore described are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to the Applicant in this proceeding authorizing the construction and operation of facilities, transportation and sale of natural gas in interstate commerce as more fully described in the application and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized to be constructed and operated by Applicant shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within twelve months of the date on which this order issues.

(D) Southwest Gas Corporation before construction of the facilities authorized hereby shall file with the Commission appropriate evidence of authorization by the regulatory bodies of California and Nevada authorizing the sale and distribution of natural gas in the respective states as proposed.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

WARREN PETROLEUM CORPORATION (OPERATOR), G–20478, RI63–486*; KERR-MCGEE INDUSTRIES, INC., G–20479, RI63–460*; TEXACO INC., G–20451, RI64–69; CITIES SERVICE OIL COMPANY, RI63–485, RI65–269

ORDER CONDITIONALLY APPROVING RATE SETTLEMENT PROPOSAL, REQUIRING FILING OF NOTICES OF CHANGE, SEVERING AND TERMINATING PROCEEDINGS AND PRESCRIBING REFUNDS

(Issued June 3, 1965)

There is before us for consideration an Offer of Settlement filed by Warren Petroleum Corporation, Kerr-McGee Oil Industries, Inc., Texaco Inc., and Cities Service Oil Company (WKTC) pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure in the above-docketed proceedings which concern proposed increased rates under six FPC Gas Rate Schedules for sales of natural gas to Lone Star Gas Company (Lone Star) and Cities Service Gas Company (Cities) from the Garvin County Plants, Garvin County, Oklahoma. These proceedings involve proposed increased rates, collected subject to refund, from a rate of 11.0¢ per Mcf of natural gas at 14.65 psia to 16.8¢ per Mcf in 1960 and to 17.9¢ per Mcf in late 1963 and early 1964.

In summary the settlement proposal as filed by WKTC provides:

(1) a settlement rate of 14.5¢ per Mcf at 14.65 psia under each of the rate schedules for jurisdictional sales of natural gas to Lone Star and Cities;

(2) WKTC waives the right to file for any contractually authorized increases in rates under the subject rate schedules until July 1, 1968, excepting for possible increases occasioned by the tax reimbursement provisions contained therein;

(3) WKTC proposes to refund approximately $1,670,975 of the monies collected subject to refund through March 1, 1964, plus $103,194 interest computed at 7% to June 1, 1964. Additionally, it proposes to refund the difference between the settlement rate and the effective contract rate, with applicable interest, for deliveries subsequent to March 1, 1964.

---

*And Rate Orders of October 12, 1960, Permitting Filing, Providing for Hearing on, and Making Rate Effective Subject to Refund.

WKTC reserves the right to file for increased rates if we should determine as a result of an applicable area rate proceeding that the just and reasonable rate for the area is higher than the settlement rate, and, of course, WKTC agrees that if our determination in such a proceeding is that the proper rate is lower than the settlement rate it agrees to abide promptly with our decision.

WKTC states in its offer that it has since 1954 added substantial volumes of gas for the purpose of meeting its commitments under the subject rate schedules. It had done so by negotiating over 300 new contracts in four counties surrounding the Garvin County Plant complex. In so doing, it has been faced with considerable competition from other purchasers of natural gas. An appreciable portion of such competition has resulted from intrastate consumption beyond the jurisdiction of this Commission. Therefore, WKTC contends that its proposed settlement rate of 14.5¢ per Mcf of natural gas is necessary for it to maintain the deliverability required by its contracts with Lone Star and Cities, and, as a result, avoid a substantial increase in its unit cost of processing gas through the plants. We have considered similar circumstances in the settlement proposal filed by *National Fuels Corporation*, Docket No. G–20426, and in the order issued therein on May 24, 1965, 33 FPC 1048, we stated that such circumstances were sufficiently analogous to those in other settlement proposals wherein we approved rates in excess of the applicable area increased rate ceilings as to require similar treatment. Since the circumstances set forth by WKTC are similar, if not identical, to those considered by us in *National, supra*, we believe that an exception to the applicable area increased rate ceiling is likewise warranted here. However, we do not find good cause to justify a rate above 14.0¢ per Mcf of natural gas, nor do we find any reason not to require refunds of all amounts collected in excess of those which would have been collected at 14.0¢ per Mcf on sales of gas from September 1, 1961, to the date of the issuance of this order with applicable interest thereon.

The data submitted by WKTC show that supplies contracted for prior to 1954 and those contracted for subsequent thereto, as well the supplies required to maintain deliverability in the future, when considered in conjunction with the ceiling prices set forth in the policy statement, support our determination that a rate of 14.0¢ per Mcf of natural gas is in the public interest. Consequently, we shall condition our approval of WKTC's proposal to require each, or any of the co-owners to make appropriate filings to reflect a rate of 14.0¢ per Mcf of natural gas at 14.65 psia.

In regard to refunds, we have utilized cost of service studies and revenues based on contract rates to determine WKTC's revenue-cost relationship in its jurisdictional operation of the Garvin County Plants. Additionally, we have utilized data available to us from company-wide settlements of some of the companies involved (*e.g.*, *Cities Service Production Company*, *et al.*, Docket No. G–9510, *et al.*, 28 FPC 1114; *Texaco Inc.*, Docket No. G–8969, *et al.*, 30 FPC 1631). These data indicate that it is appropriate that we require refunds to be computed for sales made to Lone Star and Cities on and after September 1, 1961, with applicable interest, and we shall condition our approval of the settlement offer to so provide. Accordingly, the amount of monies to be refunded will be approximately $4,800,000, exclusive of applicable interest to be computed to the date of issuance of this order, and WKTC's future revenues will be decreased approximately $1,340,000 annually as a result of the settlement, if each of the co-owners accepts the terms and conditions of this order.

For all of the reasons set forth in our order issued July 8, 1964, in *Humble Oil & Refining Company*, Docket No. G–9287, *et al.*, 32 FPC 49, we shall require WKTC to retain the amount of refunds, with interest, ordered herein in trust until further order directing the nature of their disposition and also to submit within 45 days of this order to the Commission and to Lone Star and Cities a detailed report setting out the amount of refund related to the instant rate schedules, the volumes of gas sold thereunder and the period covered. We shall also by separate action direct Lone Star and Cities, within 10 days from the receipt of such reports, to each submit a report of its own setting forth whether it intends to pass on all or part of such refund amounts to its customers and the names of such customers and amounts of refund each would receive, or, if it claims the right to retain any portion of the refunds, a brief statement as to the legal or equitable basis for such claim. In the event such reports indicate that the refunds will flow through to ultimate consumers or distribution companies not subject to the Commission's jurisdiction, the Commission will authorize the release of such refund sums by WKTC (unless a state regulatory authority after notification of the sum to be made available to a company subject to its regulatory jurisdiction asks us to defer releasing the funds until it can determine their ultimate disposition). In the event a pipeline purchaser from Lone Star or Cities (or a pipeline customer of such a pipeline) indicates that it is asserting a claim to retain substantial refund sums the Commission will by further order prescribe the procedure for determining the relative rights to such funds of such pipeline or its customers.

We find that approval of the proposed settlement, as conditioned herein, would serve the public interest.

The Commission finds:

The proposed settlement of the above-designated proceeding, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by WKTC on May 14, 1964, and as herein conditioned is in the public interest and is appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed with the Commission by WKTC on May 14, 1964, is hereby approved in accordance with the provisions of this order.

(B) WKTC shall each file, within 30 days from the date of issuance of this order, a notice of change in rate providing for the 14.0¢ per Mcf of natural gas rate specified herein. The notices of change shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) WKTC shall each compute the difference between the rate collected subject to refund and the related settlement rate for the period from September 1, 1961, to the date of this order, together with interest as specified in the above dockets to the date of this order.** WKTC shall each within 45 days from the date of this order submit a report to the Commission, and serve a copy on Lone Star and Cities setting out the amount of refund related to the subject rate schedule (showing separately the principal and applicable interest), the basis used for such determination and the period covered.

(D) WKTC shall retain the refund amounts shown in the report required under paragraph (C) above, subject to further order of the Commission directing the disposition of those amounts.

(E) If WKTC elects to commingle these retained refunds with each of its general assets and use them for each of their corporate purposes, each who so elects shall pay interest thereon at the rate of 6% per annum on all funds thus available from July 15, 1965 to the date on which they are paid over to the person ultimately determined to be entitled thereto in a final order of the Commission.

**And Rate Orders of October 12, 1960, Permitting Filing, Providing for Hearing on, and Making Rate Effective Subject to Refund.

(F) WKTC shall each tender for filing on or before July 15, 1965, an executed Escrow Agreement, conditioned as set out below, accompanied by certificate showing service of a copy thereof upon Lone Star and Cities. Unless notified to the contrary by the Secretary within 30 days from the date of filing thereof, each of the Escrow Agreements shall be deemed to be satisfactory and to have been accepted for filing. The Escrow Agreements shall be entered into between WKTC and any bank or trust company used as a depositor for funds of the United States Government and the agreement shall be conditioned as follows:

(1) WKTC, the bank or trust company, and the successors and assigns of each, shall be held and formally bound unto the Federal Power Commission for the use and benefit of those entitled thereto, with respect to all amounts and the interest thereon deposited in a special escrow account, subject to such agreement, and such bank or trust company shall be bound to pay over to such person or persons as may be identified and designated by final order of the Commission and in such manner as may be therein specified, all or any portion of such deposits and the interest thereon.

(2) The bank or trust company may invest and reinvest such deposits in any short-term indebtedness of the United States or any agency thereof or in any form of obligation guaranteed by the United States which is, respectively, payable within 120 days as the said bank or trust company in the exercise of its sound discretion may select.

(3) Such bank or trust company shall be liable only for such interest as the invested funds described in Paragraph (2) above will earn and no other interest may be collected from it.

(4) Such bank or trust company shall be entitled to such compensation as is fair, reasonable and customary for its services as such, which compensation shall be paid out of the escrow account to such bank or trust company. Said bank or trust company shall likewise be entitled to reimbursement for its reasonable expenses necessarily incurred in the administration of this escrow account, which reimbursement shall be made out of the escrow account.

(5) Such bank or trust company shall report to the Secretary quarterly, certifying the amount deposited in the bank or trust company for the quarterly period.

(G) WKTC shall each, over the signature of a responsible officer, file with the Commission, within 30 days from the date of the issuance of this order, an original and one copy of its acceptance or rejection of the terms and conditions of this order, including specifically the requirement that it agree to a filing moratorium upon each of the subject filed rate schedules to July 1, 1968.

(H) Any party to the proceedings having objection to the terms of this order shall within 30 days from the date of issuance of this order set forth such objections in writing to the Commission (original and one copy) and by serving copies on the other parties.

(I) If as a result of any objections filed pursuant to paragraph (H) hereof, the Commission by subsequent order changes WKTC's duties and obligations hereunder, each of WKTC's acceptance of this settlement order shall not be binding on it without its express agreement.

(J) Upon compliance by WKTC with all the terms and provisions of this order, the Section 4(e) proceedings in Docket Nos. G-20478, RI63-486, G-20479, RI63-460, G-20451, RI64-69, RI63-485 and RI65-269 shall terminate. Additionally, the order of October 12, 1960, Permitting Filing, Providing for Hearing on, and Making Rate Effective Subject to Refund, concerning the sales from the Garvin County Plants shall terminate.

(K) Upon termination of the Section 4(e) proceedings set forth in Paragraph (J) above, the proceedings in Docket Nos. RI63–485 and RI65–269 shall be severed from the consolidated proceedings, Docket No. RP64–9, *et al.*

(L) This order is without prejudice to any findings or orders which have been or may be made hereafter by the Commission, and is without prejudice to claims or contentions which may be made by WKTC, the Commission staff, or any affected party hereto, in any proceedings now pending, including area rate or similar proceedings, or hereafter instituted by or against WKTC or any other companies, person or parties affected by this order.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

GAS BOARD OF THE CITY OF OAKMAN, ALABAMA, DOCKET NO. CP65–297

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued June 4, 1965)

On March 24, 1965, the Gas Board of the City of Oakman, Alabama (Applicant) filed in Docket No. CP65–297 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Southern Natural Gas Company (Southern) to establish physical connection of its natural gas transmission facilities with the facilities to be constructed by Applicant and sell and deliver natural gas to Applicant for resale and distribution in the City of Oakman, Walker County, Alabama and environs, all as more fully set forth in the application. However, Applicant proposes that the Gas Board of the City of Parrish, Alabama transport natural gas for Applicant from Southern's line to Parrish. By separate order in Docket No. CP65–298 we are directing Southern to connect its facilities with those of Parrish and to render natural gas service to Parrish, *infra*, p. 1217.

Applicant proposes to construct and operate a natural gas distribution system in Oakman, and approximately 5.8 miles of 3-inch transmission line extending therefrom to an interconnection with the Parrish transmission line at the Parrish town border. Oakman's application for an order directing Southern to connect its facilities with those of Oakman is inappropriate. In this order we need only direct Southern to sell gas to Oakman.

Southern filed an answer in this proceeding on April 28, 1965, and a modification thereof on May 6, 1965, stating it had no objection to the granting of the requested order for service.

Applicant's requirements for the initial three-year period are:

	First year	Second year	Third year
Annual (Mcf)	12,010	17,901	24,007
Peak day (Mcf)	146	216	286

Cost of Applicant's proposed construction is $135,000, and will be defrayed from the sale of natural gas revenue bonds.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on April 3, 1965 (30 F.R. 4371). No protest, petition to intervene, or request for hearing has been filed in this proceeding.

The Commission finds:

(1) Southern Natural Gas Company, a Delaware corporation having its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order dated October 6, 1942, in Docket No. G-296 (3 FPC 822).

(2) Applicant, Gas Board of the City of Oakman, Alabama, having its principal place of business in Oakman, Walker County, Alabama, is legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Southern to sell natural gas to Applicant for resale as hereinbefore described and as more fully described in the application in this proceeding.

(4) Applicant should be prepared to receive natural gas from Southern for distribution in the City of Oakman, Alabama, within one year from the date of the issuance of this order.

(5) The requirement that Southern serve Applicant, as hereinafter ordered, will not place an undue burden upon it nor to impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Southern Natural Gas Company be and is hereby directed to sell natural gas to Applicant for resale as hereinbefore described.

(B) Southern shall report to the Commission the date of commencement of service to Applicant within 10 days after such service begins.

(C) Applicant shall be prepared to receive service as directed herein within one year from the date of issuance of this order.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

GAS BOARD OF THE CITY OF PARRISH, ALABAMA, DOCKET NO. CP65-298

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued June 4, 1965)

On March 24, 1965, the Gas Board of the City of Parrish, Alabama (Applicant), filed in Docket No. CP65-298 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Southern Natural Gas Company (Southern) to establish physical connection of its natural gas transmission facilities with the facilities proposed to be constructed by Applicant, and to sell and deliver natural gas to Applicant for resale and distribution in the City of Parrish, Walker County, Alabama and environs, all as more fully set forth in the application.

Applicant proposes to construct and operate a natural gas distribution system in Parrish and approximately 5.6 miles of 3-inch and 4-inch transmission line extending therefrom to a proposed point of interconnection with Southern's pipeline at a point near Cordova, Alabama. Applicant also proposes to take delivery of natural gas for the account of Oakman, Alabama, as set forth in the application in Docket No. CP65-297.

Total estimated volumes of natural gas required to meet Applicant's annual and peak day requirements for the initial three year period of proposed operations are stated to be:

	First year	Second year	Third year
Annual (Mcf)	22,343	33,439	45,073
Peak day (Mcf)	270	401	532

Total estimated cost of Applicant's proposed construction, including transmission facilities and distribution system, is stated to be $250,000, and will be financed with proceeds from the issuance and sale of natural gas revenue bonds to Southern Bond Company of Jackson, Mississippi.

Southern filed an answer in this proceeding on April 28, 1965, and a modification thereof on May 6, 1965, stating it had no objection to the granting of the requested order for service.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on April 7, 1965 (30 F.R. 4509). No protest, petition to intervene, or request for hearing has been filed in this proceeding.

The Commission finds:

(1) Southern Natural Gas Company, a Delaware corporation having its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order dated October 6, 1942 in Docket No. G–296 (3 FPC 822).

(2) Applicant, Gas Board of the City of Parrish, Alabama, having its principal place of business in Parrish, Walker County, Alabama, is legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Southern to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicant, and to sell natural gas to Applicant for resale as hereinbefore described and as more fully described in the application in this proceeding.

(4) Applicant should be prepared to receive natural gas from Southern for distribution in the City of Parrish, Alabama, within one year from the date of the issuance of this order.

(5) The requirement that Southern serve Applicant, as requested, will not place an undue burden upon it nor impair its ability to render adequate service to existing customers.

The Commission orders:

(A) Southern Natural Gas Company be and is hereby directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant, as hereinbefore described, and to sell natural gas to Applicant for resale as hereinbefore described.

(B) Southern shall report to the Commission the date of commencement of service to Applicant within 10 days after such service begins.

(C) Applicant shall be prepared to receive service as directed herein within one year from the date of issuance of this order.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

LOUISIANA NEVADA TRANSIT COMPANY, DOCKET NO. CP65-336

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 4, 1965)

On April 21, 1965, Louisiana Nevada Transit Company (Applicant) filed in Docket No. CP65-336 an application pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(b) of the Regulations under the Act, for a certificate of public convenience and necessity authorizing the construction during the 12-month period commencing June 1, 1965, and the operation of certain natural gas facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application in this proceeding.

The total cost of the proposed facilities will not exceed a maximum of $200,000, and no single project will exceed a cost of $50,000, which costs will be financed from cash on hand.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new and existing supplies of natural gas in various producing areas adjacent to its system.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on June 3, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Louisiana Nevada Transit Company, a Nevada corporation having its principal place of business in Ada, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 20, 1942, in Docket No. G-246 (3 FPC 837).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act

and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the 12-month period commencing June 1, 1965, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $200,000, with no single project to exceed a cost of $50,000.

(8) Good cause has been shown for waiver of the cost limitations imposed by Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Louisiana Nevada Transit Company, to construct during the 12-month period commencing June 1, 1965, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of of said Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the 12-month period commencing June 1, 1965, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $200,000, with no single project to exceed a cost of $50,000.

(E) Applicant's request for waiver of the cost limitations imposed by Section 157.7(b) of the Commission's Regulations under the Natural Gas Act is hereby granted.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP65-334

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT

(Issued June 7, 1965)

On April 21, 1965, Cities Service Gas Company (Applicant), filed in Docket No. CP65-334 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon certain facilities and for a certificate of public convenience and necessity authorizing the construction and operation of certain transmission facilities, all as more fully set forth in the application.

Applicant proposes to: (1) abandon and salvage approximately 5,826 feet of 2-inch and 4,897 feet of 4-inch pipeline in its Greenwich gas pipeline, Sedgwick County, Kansas; (2) abandon by sale to The Gas Service Company (Gas Service) approximately 10,652 feet of its Greenwich 2-inch pipeline in Sedgwick County, Kansas, for use by Gas Service in serving several rural domestic customers in the area; (3) construct and operate meter facilities to measure the gas to be sold to Gas Service from the line to be sold to it; (4) abandon and salvage approximately 1,850 feet of 2-inch, 2,728 feet of 3-inch and 10,538 feet of 4-inch pipeline in its Chase Fuel System in Barton County, Kansas; (5) abandon by sale to Union Gas System, Inc. (Union) approximately 3,814 feet of its Craig Free Gas 2-inch pipeline in Johnson County, Kansas for use as part of Union's general system to serve rural domestic customers in the area; (6) abandon by sale to the City Utilities of Springfield, Missouri, approximately one mile of its Springfield 16-inch pipeline, Greene County, Missouri, in 1965 and another mile of the same line in 1966, all for use in the Springfield distribution system; (7) abandon and salvage approximately 9,000 feet of 8-inch, 825 feet of 7-inch and 5,768 feet of 6-inch pipeline in its Boyer Storage System in Butler County, Kansas.

Applicant proposes abandonment of the designated facilities for the reason that they are either no longer required in order to continue service to its existing customers or they can be more feasibly utilized by the purchasing distribution companies.

The estimated cost of facilities to be salvaged is $7,800, with a salvage credit of $11,800. The facilities to be sold to Gas Service, Union and the City Utilities of Springfield will be sold for a total sum of $57,950. The total estimated cost of the facilities which are to be constructed is $1,050, which sum will be paid for out of treasury cash.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application, has been filed.

At a hearing held on June 3, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G–298 (4 FPC 471).

(2) The facilities proposed to be abandoned by Applicant, as hereinbefore described and as more fully described in the application filed in this proceeding, are used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and permission and approval therefor should be granted as hereinafter ordered.

(4) The proposed construction and operation of facilities, and the transportation of natural gas in interstate commerce, as hereinbefore described and as more fully described in the application filed in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) The aforesaid proposed construction and operation of facilities, and the transportation of natural gas in interstate commerce are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(7) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's com-

pliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) Permission for and approval of the abandonment by Applicant, Cities Service Gas Company, of the facilities hereinbefore described, as more fully described in the application and exhibits filed in this proceeding, are hereby granted.

(B) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, Cities Service Gas Company authorizing the construction and operation of facilities, and the transportation of natural gas as hereinbefore described, all as more fully described in the application, upon the terms and conditions of this order.

(C) The certificate issued by paragraph (B) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

(D) Applicant shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (A) above within ten days of such abandonment.

(E) The facilities hereby authorized shall be constructed and placed in actual operation, and the transportation of gas authorized in paragraph (B) above shall commence as provided in paragraph (b) of Section 157.20 of the aforesaid Regulations within six months of the date on which this order issues.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP65-275

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 7, 1965)

On March 8, 1965, Panhandle Eastern Pipe Line Company (Applicant) filed in Docket No. CP65-275 an application, as supplemented on April 22, 1965, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application.

Applicant proposes to construct and operate an additional 4,000 horsepower compressor unit with related facilities at its existing Hugoton Compressor Station in Stevens County, Kansas. The proposed facility is required in order to offset a continuing decline in the Kansas-Hugoton Field pressures, and will permit Applicant to maintain peak day deliverability and to fully utilize yearly allowables of its gas suppy from this area.

Total estimated cost of the proposed facilities is $1,150,000, and will be financed with funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on June 3, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G–254 (4 FPC 1081).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, Panhandle Eastern Pipe Line Company, authorizing construction and operation of the facilities hereinbefore described, as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations, within one year from the date on which this order issues.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

FLORIDA GAS TRANSMISSION COMPANY, DOCKET NO. CP65–165

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 8, 1965)

On December 9, 1964, Florida Gas Transmission Company (Applicant) filed in Docket No. CP65–165 an application, as supplemented February 5, February 23, March 2 and March 26, 1965, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and the sale and delivery of natural gas to its existing customers, all as more fully set forth in the application.

Applicant proposes to construct and operate: (1) a total of 15 30-inch mainline loops, aggregating approximately 210 miles, on its transmission pipeline system at various points between its Compressor Station 7 at Eunice, Louisiana, and its Compressor Station 16 at Brooker, Florida; (2) two new compressor stations, one near Juniper Springs, Florida, and the other near Fort Pierce, Florida, totaling 10,500 installed horsepower; (3) additional units at eight existing compressor stations, and turbocharging at two existing compressor stations, which facilities will provide a total of 20,200 installed horsepower; (4) one new 18-inch supply lateral approximately 51 miles in length, extending from East White Lake Field in Southern Louisiana to Applicant's existing 24-inch main pipeline near Fort Barre, Louisiana; (5) approximately 22 miles of 6 and 8-inch line loops on four of its sales laterals in Florida; (6) one new meter and regulator station in East White Lake Field, for the receipt of gas; and (7) miscellaneous additions and changes in its existing sales meter and regulator stations in Florida.

Construction of the proposed facilities will increase Applicant's pipeline system annual average day capacity from 358,930 Mcf to 444,060 Mcf, an increase of 85,130 Mcf.

Applicant proposes to obtain the necessary additional gas from Pan American Petroleum Corporation (Pan American) and Austral Oil Company Incorporated (Austral), pursuant to an agreement between Applicant as buyer and Pan American and Austral as sellers dated November 20, 1964, under which Applicant proposes to purchase an average daily quantity of 80,000 Mcf. Sellers are obligated to provide a maximum daily quantity of 102,000 Mcf.

Total estimated cost of Applicant's proposed construction is $42,690,000, and will be financed by the issuance and sale of $25,150,000 of First Mortgage Pipeline Bonds and $11,000,000 of Debentures, with the balance of $6,540,000 to be financed with cash on hand.

Applicant was issued a limited temporary certificate herein on April 9, 1965, authorizing the construction and operation of facilities for the sale and delivery of additional volumes of natural gas to Swift & Company at its Agricola Drying Plant, Polk County, Florida.

Petitions to intervene herein were filed by Seminole Pipeline Company and the Cities of Homestead and Kissimmee, Florida, on January 13, 1965, and April 19, 1965, respectively. However, on March 11, 1965 and May 24, 1965, respectively, these petitions to intervene were withdrawn. No other interventions have been filed.

At a hearing held on June 3, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits and supplements thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Florida Gas Transmission Company, a Delaware corporation having its principal place of business in Winter Park, Florida, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1956, in Docket Nos. G–9262 and G–9960 (16 FPC 118).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, and the construction and operation thereof are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform

the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation by Applicant of the proposed facilities are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Florida Gas Transmission Company, to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of the aforesaid Regulations, within 18 months from the date on which this order issues.

(D) The grant of the certificate issued hereby shall not be construed as determining for the purpose of any future rate proceeding involving Applicant the matter of the proper costs to be allocated to the sales undertaken pursuant to the authorization granted herein.

(E) The certificate issued hereby is granted on the express condition that Applicant shall not make a filing under Section 4 of the Natural Gas Act to increase its Rate Schedule G rate above the presently effective rate of 57 cents per M^2Btu prior to the expiration of the first three years of operation of the expanded system, or January 1, 1970, whichever is earlier; and provided said 57-cent rate remains in effect, Applicant shall not make a filing under Section 4 of the Act to increase its Rate Schedule I rate above the presently effective rate of 33 cents per M^2Btu prior to the expiration of the first three years of operation of the expanded system, or January 1, 1970, whichever is earlier. The foregoing condition, however, is without prejudice to Applicants' right to file for rate increases due to increases in costs amounting to $100,000 or more annually resulting from increases in tax rates or from the imposition of new taxes on or after April 1, 1965 to which Applicant is determined to be subject.

(F) The condition set forth in paragraph (E) of this order, which Applicant has indicated it is willing to accept, is without prejudice to the Commission's right to undertake at any time such rate proceedings as it may find necessary or appropriate to establish just and reasonable rates for Applicant and issue such orders in connection therewith as found to be necessary to protect the public interest.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

FLORIDA GAS TRANSMISSION COMPANY, DOCKET NO. CP65-284

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 8, 1965)

On March 15, 1965, Florida Gas Transmission Company (Applicant) filed in Docket No. CP65-284 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application.

Applicant proposes to construct and operate a line tap and approximately 500 feet of 4-inch pipe, together with a meter and regulator station, at a point on its 6-inch Avon Park lateral in Highlands County, Florida, for the delivery of natural gas on a preferred interruptible basis to Sebring Utilities Commission (Sebring), Sebring, Florida. Annual and peak day deliveries are estimated to be 650,000 M^2Btu and 2,400 M^2Btu respectively.

Sebring will utilize the gas in its power plant for the production of electricity to be distributed to residential, commercial and industrial customers in and around the City of Sebring, Florida.

Total estimated cost of Applicant's construction is $27,000, and will be financed with cash on hand.

On April 19, 1965, the Cities of Homestead and Kissimmee, Florida filed herein a petition to intervene. However, on May 24, 1965, said petition was withdrawn. No other interventions have been filed.

At a hearing held on June 3, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Florida Gas Transmission Company, a Delaware corporation having its principal place of business in Winter Park, Florida, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1956, in Docket Nos. G–9262 and G–9960 (16 FPC 118).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation by Applicant of the proposed facilities are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, Florida Gas Transmission Company, authorizing construction and operation of the facilities hereinbefore described, as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of the aforesaid Regulations, within one year from the date on which this order issues.

(D) The certificate issued hereby is granted on the express condition that the interruptible service authorized herein shall be subject to any curtailment or interruption required to meet existing or future contracted maximum delivery obligation of Applicant for firm service to its customers.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

FLORIDA GAS TRANSMISSION COMPANY, DOCKET NO. CP65–288

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 8, 1965)

Florida Gas Transmission Company (Applicant) filed an application on March 16, 1965, in Docket No. CP65–288, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 2.04 miles of 4½-inch lateral pipeline, together with meter and regulator facilities, extending from Applicant's existing 8-inch Sarasota lateral near Pierce, Florida, to the proposed facilities of Consumers Cooperative Association (Consumers), a direct industrial customer, to be located at Green Bay, Polk County, Florida, and the transportation and delivery of natural gas thereto on a preferred interruptible basis, all as more fully set forth in the application.

Applicant proposes to construct and operate the said facilities to deliver to Consumers up to 1550 Mcf of natural gas daily and up to 450,000 Mcf annually on a so-called "preferred interruptible" basis, under the terms of a contract between Applicant and Consumers dated February 11, 1965.[1] The natural gas will be used as fuel in the processing of phosphate-bearing rock and ammonia in the manufacture of phosphatic fertilizer in Consumers plant.

The estimated cost of the facilities necessary to the transportation and delivery of the proposed volumes of natural gas to Consumers is $68,000, which will be defrayed from Applicant's current funds.

The natural gas requirements of Consumers' plant will be subject to curtailment when necessary to meet the Applicant's firm service requirements. An appropriate condition to provide for such curtailment will be attached to the certificate issued in this proceeding.

After due notice the Cities of Homestead and Kissimimee, Florida, filed on April 19, 1965 a joint petition to intervene in this proceeding. On May 24, 1965 the said petition was withdrawn. No other petitions to intervene or notice of interventions or protest to the granting of the application has been filed.

At a hearing held on June 3, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Florida Gas Transmission Company, a Delaware corporation having its principal place of business in Winter Park, Florida, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission.

(2) The proposed construction and operation of facilities and transportation of natural gas, as hereinbefore described and as more fully described in the ap-

---

[1] The contract provides for a rate of 36.0 cents per Mcf plus upward adjustment for increases in purchased gas costs or oil prices.

plication and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and transportation of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the certificate be granted on the express condition that the interruptible service authorized herein should be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to the Applicant in this proceeding, authorizing the construction and operation of facilities and the transportation of natural gas as more fully described in the application in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the transportation of natural gas authorized in paragraph (A) above shall commence as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date on which this order issues.

(D) The certificate issued in paragraph (A) above is granted on the express condition that the interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

OPINION NO. 464

TEXACO INC., G-8087, G-12710; RADCLIFFE KILLAM, G-10764; CHAMPLIN PETROLEUM COMPANY, G-11150, G-18065; SINCLAIR OIL & GAS CO., ET AL., G-11744; PAN AMERICAN PETROLEUM CORPORATION, G-12325; SHELL OIL COMPANY, G-12336, G-13295, G-14979; EDWIN G. BRADLEY, G-12833; KERR-MCGEE OIL INDUSTRIES, INC., G-12886; UNION OIL COMPANY OF CALIFORNIA, G-12908; SUN OIL COMPANY (MID-CONTINENT DIVISION), G-12972; COLORADO OIL & GAS CORPORATION (OPERATOR), ET AL., G-13086; OKLAHOMA NATURAL GAS COMPANY, G-13204; SINCLAIR OIL & GAS COMPANY (OPERATOR), ET AL., G–13299; GRAHAM-MICHAELIS DRILLING COMPANY, ET AL., G–13665, G–19318; ASHLAND OIL & REFINING COMPANY, G–13929, G–18117, G–18916; HUGHES SEEWALD (OPERATOR), ET AL., G–14953; CARTER-JONES DRILLING COMPANY, INC., G–14980; SINCLAIR OIL & GAS COMPANY, G–15291; HELMERICH & PAYNE INC. (OPERATOR), ET AL., G–15519; NOR-MAC-BURNS CO., G–15521; FOREE DRILLING CO., ET AL., G–16004; MINERAL VENTURES CORPORATION, G–16460; KEENER OIL COMPANY, G–16462; PAN AMERICAN PETROLEUM CORPORATION (OPERATOR), G–16529; OKLAHOMA NATURAL GAS COMPANY (FORMERLY STATE FUEL SUPPLY COMPANY), G–16853; THE SUPERIOR OIL CO., G–16878; THOMAS E. BERRY, G–16971; TEXACO INC. (OPERATOR), ET AL., G–17015; EDWIN L. COX, G–17222; MONSANTO COMPANY, G–17260; SOCONY MOBIL OIL COMPANY, INC., G–17777; SOHIO PETROLEUM COMPANY (OPERATOR), ET AL., G–17791; MABEE ROYALTIES, INC., G–18044; J. E. MABEE COMPANY, G–18045; BIG CHIEF DRILLING COMPANY, G–18111; WILCOX OIL COMPANY, G–18176; FOREST OIL CORPORATION, G–18239, G–18250; THE ATLANTIC REFINING COMPANY, G–18288, G–18708, CI61–954; CHARLES C. PEPPERS, G–18332; PAN AMERICAN PETROLEUM CORP. (OPERATOR), ET AL., G–18435; VAN GRISSO OIL COMPANY, G–18450, G–19595, CI63–59; PIONEER PRODUCTION CORPORATION, G–18476; GLEN F. THOMAS AND GEORGE W. BREWER, JR., D/B/A THOMAS & BREWER (OPERATOR), ET AL., G–18513; PHILLIPS PETROLEUM COMPANY, G–18523, CI60–144, CI60–197, CI60–384, CI61–1629; THE PURE OIL CO. (OPERATOR), ET AL., G–18881; F. A. GILLESPIE AND SONS COMPANY, G–18883; APACHE CORPORATION, G–18933, CI60–203, CI61–120, CI61–1339, CI61–1422; GULF OIL CORP., G–18977; WESTLAND OIL DEVELOPMENT CORP., G–18996; LARIO OIL & GAS CORPORATION, G–19239, CI61–37; ANADARKO PRODUCTION COMPANY, G–19337, G–19338; CRESTMONT OIL COMPANY (OPERATOR), ET AL., G–19420; SOHIO PETROLEUM COMPANY, G–19421, G–20101; J. M. LEONARD, G–19426; THE BRADLEY PRODUCING CORPORATION (OPERATOR), ET AL., G–19480; MIDWEST OIL CORPORATION, G–19526, CI62–571; AN-SON CORPORATION, G–19542, CI60–663; E. A. OBERING, OPERATOR, G–19616; REMLIG OIL COMPANY, G–19688; RUSSELL MAGUIRE (OPERATOR), ET AL., G–19837; NEW ERA ROYALTIES, G–19960; THE BRADLEY PRODUCING CORPORATION, G–20148, CI62–1367; CABOT CORPORATION (SW), G–20250, CI60–105, CI60–446, CI60–471, CI61–1706, CI62–1332; ASHLAND OIL & REFINING COMPANY & UNITED CARBON COMPANY, G–20308, CI61–16, CI61–73; WYANT VENTURES, LTD., G–20327; HELMERICH & PAYNE INC., ET AL., G–20486; UNION OIL COMPANY OF CALIFORNIA, CI60–22, CI61–323, CI61–769, CI61–770; EDWIN L. COX, CI60–25, CI60–808, CI61–1309, CI61–1666; HARPER OIL COMPANY, CI60–146, CI61–155, CI61–795, CI62–1299; COLUMBIAN FUEL CORPORATION, ET AL., CI60–169; OKLAHOMA NATURAL GAS COMPANY, CI60–190, CI61–260, CI61–698, CI63–567; PETROLEUM, INC., CI60–214, CI60–301, CI61–1453; SUN OIL COMPANY (MID-CONTINENT DIVISION), CI60–269, CI61–738, CI62–1111; KENNETH B. MOORE, CI60–321; ANDERSON PETROLEUM, ET AL., CI60–456; E. B. THORNBURG AND CLEO E. THORNBURG, CI60–488; C. R. VAN HOESEN, AGENT, ET AL., CI60–526; OZARK-MAHONING COMPANY, CI60–584, CI60–711, CI60–712, CI61–314; HARPER OIL COMPANY (OPERATOR), ET AL., CI60–590; SKELLY OIL COMPANY, CI60–602; CAL-RAY PETROLEUM CORPORATION, CI60–614; THE VICKERS PETROLEUM CO., INC., (OPERATOR), ET AL., CI60–632, CI61–108; CONTINENTAL OIL COMPANY, CI60–634; RIDDELL PETROLEUM CORPORATION, CI60–667; AMERADA PETROLEUM CORPORATION, CI60–704; PAN AMERICAN PETROLEUM CORPORATION, CI60–722, CI61–19, CI61–228, CI63–269; KINGWOOD OIL COMPANY, CI60–744; THE SHAMROCK OIL AND GAS CORPORATION, CI60–766; EASON OIL COMPANY, CI60–772, CI60–773, CI61–235, CI61–1466; COLORADO OIL & GAS CORP., CI60–781; THOMAS E. BERRY, ET AL., CI60–785; T. W. EASON, ET AL., CI60–805; WILBUR J. HOLLEMAN, CI60–827; HUGHES SEEWALD, ET AL., CI61–14; GLOBAL OILS, INC. (OPERATOR), ET AL., CI61–26; J. M. HUBER CORP., CI61–28, CI61–1448, CI61–1537, CI62–2, CI63–80; KIRBY PETROLEUM COMPANY, CI61–30, CI62–6; KERR-MCGEE OIL INDUSTRIES, INC., CI61–36; DANIEL W. VAREL, CI61–139; RUSSELL L. MAGUIRE, ET AL., CI61–159; RIFFE PETROLEUM COMPANY, CI61–198; CAROLINE HUNT SANDS, ET AL., CI61–224, CI61–399; AMBASSADOR OIL CORPORATION, ET AL., CI61–253; SOCONY MOBIL OIL CO., INC., CI61–271, CI62–603, CI62–998; PETROLEUM EXPLORATION, INC., OF TEXAS, ET AL., CI61–272; STATEX PETROLEUM (OPERATOR), ET AL., CI61–302, CI61–417, CI61–512; HERMAN BROWN ESTATE, CI61–403; WILCOX OIL COMPANY, CI61–521; MAYFLO OIL COMPANY (OPERATOR), CI61–538, CI61–1417; CABOT CORPORATION, CI61–540, CI61–711, CI61–1391; SUNAC PETROLEUM CORP., CI61–609; MONSANTO COMPANY, CI61–713, CI61–1777; A. L. HERSHEY, ET AL., CI61–758; OIL AND GAS VENTURES, INC., CI61–805; GLOBAL OILS, INC., CI61–868; TEXACO INC., CI61–886, CI62–38; SUN OIL COMPANY, CI61–992; SINCLAIR OIL & GAS COMPANY, CI61–1032, CI62–1070; KEENER OIL COMPANY, CI61–1207; THE PURE OIL COMPANY (OPERATOR), ET AL., CI61–1252; TENNECO OIL COMPANY, CI61–1615; CONTINENTAL OIL COMPANY, CI61–1642; AMAX PETROLEUM CORPORATION (FORMERLY BLACKWELL ZINC CO., INC.), CI61–1659; RALPH L. LEADERBRAND, CI61–1709; WARD S. MERRICK, JR., ET AL., CI61–1770; HAMILTON BROTHERS, LTD., CI61–1775, CI62–488, CI62–737; WILLIAM BARTLETT MARSHALL, ET AL., CI62–228; THOMAS K. HENDRICK (OPERATOR), ET AL., CI62–281, CI62–1093; OTTO C. BARBY, ET AL., CI62–451; PETROLEUM INC., ET AL., CI62–548; WM. H. MEISSNER, CI62–572; STANDARD OIL COMPANY OF TEXAS, A DIVISION OF CALIFORNIA OIL COMPANY, CI62–592, CI62–765; HARPER OIL COMPANY, (OPERATOR), ET AL., CI62–688; HUGH N. SPOHN, CI62–721; SAMEDAN OIL CORP., CI62–811; MAYFLO OIL COMPANY, CI62–871; SHELL OIL COMPANY, CI62–903, CI62–1536, CI63–111, CI63–267, CI63–272; HALL-JONES LIMITED (OPERATOR), CI62–1073; PETROLEUM PROPERTY MANAGEMENT, INC. (OPERATOR), ET AL., CI62–1228; CAL-RAY PETROLEUM CORP., CI62–1439, CI62–1440; NATIONAL COOPERATIVE REFINERY ASSOCIATION, CI62–1441; JAS. F. SMITH (OPERATOR), ET AL., CI62–1559, CI63–668, CI63–723; NORRIS ENGINEERING MANAGEMENT CORP. (OPERATOR), ET AL., CI63–71; A'MELL OIL PROPERTIES (OPERATOR), ET AL., CI63–1160; BLAKE HAMMAN (OPERATOR), ET AL., CI63–1257; JAMES G. MAYNARD, D/B/A MAYNARD OIL COMPANY, CI63–1337; TENNECO OIL COMPANY, CP60–116; PANHANDLE EASTERN PIPE LINE COMPANY, CP61–77, CP63–315; MICHIGAN WISCONSIN PIPE LINE COMPANY, CP63–314; COLORADO INTERSTATE GAS COMPANY, CP63–316; CIMARRON TRANSMISSION COMPANY, CP63–317; NATURAL GAS PIPELINE COMPANY OF AMERICA, CP63–318;

NORTHERN NATURAL GAS COMPANY, CP63-319; TRANSWESTERN PIPELINE COMPANY, CP63-320

OPINION AND ORDER MODIFYING AND ADOPTING INITIAL DECISION OF PRESIDING EXAMINER AND ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 10, 1965)*

Syllabus

1. Conventional requirements of public convenience and necessity under Section 7(e) of the Natural Gas Act applicable to proposed sales have been met. P. 1233.
2. *Rejecting* contention that instant proceeding contemplated decision on propriety of Btu adjustment provisions in R-200 rule-making proceeding, Commission *concludes* such determination should be made here. P. 1234.
3. Upward Btu adjustment provisions in issue are reasonably required by public convenience and necessity. P. 1235.
4. Unless pipeline is in position to offer reasonable premium for higher Btu gas, producers will have strong economic interest to extract high Btu hydrocarbons therefrom before delivery. P. 1235.
5. Contracts here containing upward Btu provisions are in-line—such prices are plus or minus appropriate Btu adjustments. P. 1235.
6. Suggestion that guideline prices in Section 2.56(a) of Regulations necessarily constituted outer limit on prices at which producers' sales would be permanently certificated, even where, as here, it is demonstrable that area in-line price is higher, is without merit. P. 1236.
7. 1,000 Btu's is the adjustment base that has gained acceptance in subject areas; any attempt to provide another base would disrupt all contracts there. P. 1236.
8. For purpose of issuing certificates in pricing areas herein, Commission adopts 1,000 Btu base for upward adjustments if permitted by contract. P. 1236.
9. Commission requires proportional downward Btu adjustments where parties provide only for upward adjustment. P. 1237.
10. Record does not justify transportation cost adjustment proposed by some interveners. P. 1237.
11. Transwestern's contracts conditioned to require that in event producers extract higher Btu gases, measurement of Btu content for price determination will be made at plant outlet. P. 1237.
12. Should Btu adjustment provisions ever be used in manner contrary to public interest, Commission can take such action as may be required. P. 1237.
13. Commission *issues* certificates of public convenience and necessity under Section 7 of the Natural Gas Act.

Homer E. McEwen, Jr. and *Dale E. Doty* for Sunray DX Oil Company.

H. L. Hester, Harry S. Littman and *Harold L. Talisman* for Ashland Oil & Refining Company.

Bernard A. Foster, Jr. and *Lewis Carroll* for The Atlantic Refining Company, Champlin Oil & Refining Co., Colorado Oil & Gas Corp. (Operator), *et al.* and Humble Oil & Refining Co.

---

*Initial decision appears on p. 1238. Rehearing denied by order issued July 28, 1965, 34 FPC 129.

Boyd D. Taylor for Cabot Corporation.

O. T. Forde, Jr., Michael J. Shea, Frank P. Saponaro, Jr. and *D. Mackey* for Colorado Interstate Gas Company.

Bruce R. Merrill, Tom Burton and *Joseph C. Johnson* for Continental Oil Co.

John E. Thomason and *Arthur F. Whitt* for Gulf Oil Corporation.

Thomas Moxcey for J. M. Huber Corporation.

Jack T. Conn and *William Amory Underhill* for Kerr-McGee Oil Industries.

Charles V. Shannon, Paul S. Davis and *Louis Flax* for Michigan Wisconsin Pipe Line Company.

Charles McDugald and *Phillip McKinzie* for Natural Gas Pipeline Company of America.

F. Vinson Roach, Jack C. Osborne, Patrick J. McCarthy, Daniel B. O'Brien, Walter E. Gallagher and *Thomas F. Ryan, Jr.* for Northern Natural Gas Company.

Lewis G. Mosburg, Jr. for Oklahoma Independent Petroleum Association.

F. T. Searls, Malcolm H. Forbush and *John B. Gibson* for Pacific Gas & Electric Company.

O. C. Sattinger, John P. Egan and *K. R. Edsall* for Pacific Lighting Gas Supply Company.

J. P. Hammond, William H. Emerson and *Carroll L. Gilliam* for Pan American Petroleum Corp.

Raymond N. Shibley and *William E. LeBuhn* for Panhandle Eastern Pipe Line Co.

Alan R. Squires and *Herbert E. Squires* for Pennsylvania Public Utility Commission.

Charles E. McGee and *James D. McKinney, Jr.* for Pioneer Production Company.

John C. Snodgrass for The Pure Oil Company.

Sherman Chickering, C. Hayden Ames and *Stanley Jewell* for San Diego Gas & Electric Co.

W. E. Notostine for The Shamrock Oil and Gas Corporation.

Oliver L. Stone and *Thomas G. Johnson* for Shell Oil Company.

Angus A. Davidson, Charles E. McGee and *James D. McKinney, Jr.* for Sinclair Oil & Gas Company.

Bradford Ross and *Lewis Carroll* for Skelly Oil Company.

Tom P. Hamill, Robert D. Haworth and *Lamar Smith* for Socony Mobil Oil Company, Inc.

William K. Tell, Jr. and *Dixon Morgan* for Sohio Petroleum Company.

John Ormasa and *K. R. Edsall* for Southern California Gas Co.

Milford Springer, Robert M. Olson and *K. R. Edsall* for Southern Counties Gas Co. of California.

Justin R. Wolf, Charles A. Case, Jr. and *Stanley Wanger* for Standard Oil Company of Texas, a Division of California Oil Company.

John A. Ward, III, Phillip D. Endom, William C. Phelps and *John O'Dean* for Sun Oil Company.

William T. Kilbourne for The Superior Oil Company.

Alfred C. DeCrane, Jr. and *James J. Flood, Jr.* for Texaco Inc.

George D. Horning, Jr., C. Frank Reifsnyder and *Patrick G. Sullivan* for Union Oil Co. of California.

John R. Rebman for Phillips Petroleum Company.

James W. McCartney and *W. H. Drushel, Jr.* for Transwestern Pipeline Company.

Albert D. McClain and *Jesse H. Foster, Jr.* for Humble Oil & Refining Company.

Richard E. Tuttle, J. Calvin Simpson and *John T. Murphy* for People of the State of California and Public Utilities Commission of the State of California.

John W. Scott and *Louis L. DaPra* for Minnesota Valley Natural Gas Company.

Edwin S. Nail for Amerada Petroleum Corporation.

Robert L. Russell and *John J. Keating, Jr.* for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

O'CONNOR, *Commissioner:*

This proceeding arises under Section 7(e) of the Natural Gas Act (Act) and is before us on exceptions[1] to Presiding Examiner William C. Levy's initial decision issued November 9, 1964. It involves 233 applications[2] by producers of natural gas for certificates of public convenience and necessity authorizing sales to six pipelines, namely, Michigan Wisconsin Pipe Line Company, Panhandle Eastern Pipe Line Company, Natural Gas Pipeline Company of America, Northern Natural Gas Company, Transwestern Pipeline Company, and Cimarron Transmission Company. The proposed sales are from the Commission's five pricing areas of Kansas, Oklahoma Panhandle, Oklahoma Other, and Texas Railroad Districts Nos. 9 and 10. The areas of Colorado and Utah were included only in the investigatory aspects of the proceeding. A large number of temporary authorizations that have been issued on the sole condition that they are subject to the results reached herein will also be determined.

The order instituting this proceeding[3] resulted from the Commission's proposed rulemaking proceeding in Docket No. R–200, which was instituted by a Notice of Proposed Additions to the Commission's Statement of General Policy, etc.[4] We there proposed to fix standards for determining whether an independent producer's gas is of "pipeline quality." Among other things, this necessitated determining whether and to what extent producer Btu adjustment provisions should be given effect. Following notice of R–200 a large number of pending applications to certificate contracts containing upward Btu adjustment clauses accumulated, and this proceeding was instituted, among other things, to dispose of those applications.

The principal questions presented herein are the necessity, propriety and impact of Btu adjustment provisions contained in producers' contracts, and the effect, if any, to be given such provisions. To permit a broad consideration of such adjustment provisions the order also provided for a general investigation under Section 14 of the Act.

The Examiner found that the conventional requirements of public convenience and necessity under Section 7(e) of the Act applicable to the sales proposed have been met. This determination is not disputed. The Examiner further found that Btu adjustment provisions do not circumvent Commission regulatory policies, and he concluded that upward Btu adjustments are necessary and proper. He would issue permanent certificates allowing such provisions to be fully effective without alteration or condition.

The California interveners agree that producer Btu adjustment provisions generally serve a useful function, but contend that such provisions could have a harmful impact on consumers by permitting the producers' rates to increase above the guideline prices established by our Statement of Policy No. 61–1.[5] Accordingly, these interveners request that such provisions be revised downward from proposed maximum price level standards. Although otherwise supporting the Examiner's decision, Staff recommends a weighted average Btu base for each pricing area. We agree with the Examiner's recommendation and, with only minor modifications, adopt his decision.

---

[1] Exceptions were filed on December 7, 1964, jointly by Southern California Gas Company, Southern Counties Gas Company of California and Pacific Lighting Gas Supply Company; on December 9, 1964, by the Commission's Staff; and on December 10, 1964, by the People of the State of California. Reply exceptions were subsequently filed by the various parties. Unless otherwise noted we shall refer to the above parties (excluding Staff) as the "California interveners."

[2] The following dockets are no longer a part of this proceeding: G–4281; G–15148; G–11122; G–14143; G–16109; G–18630; G–19051; CI61–1201; G–12353; G–17781; G–19239; CI60–361; CI60–578; CI61–439; CI61–771; CI61–794; and CI63–346. Docket No. CP61–77 was omitted from the Examiner's docket listing, and is added thereto.

[3] At 29 FPC 1079 (1963).

[4] Noticed at 18 F.R. 260, 261 (1961).

Scope of the proceeding.—There is a threshold question concerning the scope of this proceeding. The California interveners insist that the order instituting this proceeding contemplated a decision on the propriety of Btu adjustment provisions in the R–200 proceeding and not herein. They further contend that to approve the producer Btu adjustment provisions in this case would predetermine and render ineffectual the producer pricing policy we are presently considering in the R–200 and the area rate proceedings. Accordingly, they request that, if such provisions are to be approved, the producers' certificates should still be subject to such policies as may be approved in those proceedings.

We conclude that for the purpose of issuing permanent certificates under Section 7 the propriety of Btu adjustment provisions should be determined without further delay. The order instituting this proceeding contemplated such a decision, and the record is undoubtedly adequate for this purpose. Essentially, what is involved in the present certificate proceeding is determining whether a particular quality adjustment common to a number of pricing areas is compatible with the public interest and, if so, its relation to the in-line price at which sales should be certificated therein. As to the appropriate area rate proceedings, we can make whatever findings respecting the relationship of Btu adjustment provisions to just and reasonable area rates that the circumstances and policies there involved may require. As to R–200, the investigation herein provides useful information for decision there.

We especially note in this connection the valuable evidence adduced as to potential utility to the pipelines in the areas involved herein and to their customers of an over-all gas stream of more than the generally accepted Btu content for these areas The evidence indicates that with proper pipeline and distribution company engineering, there can be savings under present gas usage conditions both in direct transmission costs and in the amount of gas needed to perform a particular heating function. These savings could be increased still more through improved gas consumption equipment. Despite this significant showing, however, the present record is not adequate for any precise determination of the potential savings, since these depend in part on facts of individual pipeline construction not before us. In any event it would be premature to attempt to draw any policy conclusions from the facts of record here in the absence of a comprehensive study of pipeline tariff practices and other existing operational characteristics of both the pipelines and the distribution companies which are relevant to a determination of whether gas consumers would secure the benefits of an average pipeline Btu content of substantially more than 1,000 Btu per cubic foot.[6]

---

[5] 24 FPC 818 (1960).

[6] We recognize that where a pipeline with a higher than 1,000 Btu average gas content extracts such higher Btu's (or, where extraction activities bring the gas stream below the 1,000 Btu level) the Commission in certification and rate proceedings can require the pipeline to compensate its customers for the shrinkage volumes resulting from the extraction facilities. See *e.g., Mid-America Pipeline Company* v. *F.P.C.*, 330 F. 2d 226 (CADC-1964). And as indicated above, it might in such instances also be appropriate to give consideration to the question of whether bracket provisions in a pipeline tariff permitting a broad range in Btu content above and below 1,000 Btu, without affecting the pipeline's sales price (and thus making possible consistent free extraction of considerable heat value), are necessary or appropriate in the public interest.

The Btu Adjustment Provisions in Issue are Reasonably Required by Public Convenience and Necessity.—The record makes it clear that the Btu adjustment provisions in issue here are in the public interest, performing a useful and indeed essential function in the production and marketing of natural gas.

It is no coincidence that, while downward Btu provisions, usually from a 1,000 Btu base, are found generally in all producing areas, the upwards Btu clause has been limited almost entirely to the five pricing areas involved in the instant certificate proceedings. In these or nearby areas considerable amounts of low Btu gas, ranging as low as 830 Btu per cubic foot, have been discovered and made available for the interstate market. It is essential, if this gas is to be brought up to marketable standards, that it be mixed with higher Btu gas—gas which also is present in considerable quantities in the areas, with Btu ranges of up to approximately 1,200 Btu's. It is clear, however, that unless the pipeline is in a position to offer a reasonable premium for the higher Btu gas, the producers will have a strong economic interest to extract the high Btu hydrocarbons from their gas before delivery to the pipeline. Where the producer is too small to perform this function for itself, it would, where feasible, utilize the extraction facilities of the larger producers. Under these circumstances, an appropriate upward Btu adjustment provides the necessary inducement for producers making it possible for the pipelines to acquire the supply of high Btu gas required for blending without which a large supply of low Btu gas could not be brought into the interstate pipeline system. Accordingly, we hold that the upward clauses here in issue are reasonably required by the public convenience and necessity for these areas.

The contracts in issue here containing upward Btu provisions are in line.—The California interveners, while not disagreeing with the conclusion that provisions calling for higher prices for gas with Btu content in excess of 1,000 are in the public interest, contend that such provisions should be authorized only within a framework under which all Btu adjustments would be kept within the guideline ceilings for the various pricing areas set out in Section 2.56(a) of our Rules, as amended. In essence, they seek a predominantly optimum standard for Btu quality. They contend that the starting point should be the highest Btu level at which significant volumes of gas are offered for sale in the various pricing areas.

This argument misconceives the nature of this certificate proceeding. The question in such proceeding, insofar as maximum price limitations are concerned, is solely what is the in-line price for the areas in question within the meaning of the governing decisions of this Commission and the courts. See *e.g.*, *Atlantic Refining Co.* v. *Public Service Commission of New York* (CATCO), 360 U.S. 378 (1959); *California Oil Co.* v. *F.P.C.*, 315 F. 2d 652 (CA10-1963); *Atlantic Refining Company* v. *F.P.C.*, 316 F. 2d 677 (CADC-1963). So considered, there can be no serious question but that the in-line prices in the various areas here concerned are plus or minus appropriate Btu adjustments. This result stems from the fact that many of the permanent certificates in these areas upon which the in-line price primarily depends contained such upward Btu adjustment provisions. Under these circumstances, the in-line price in these areas must be held to include such provisions and the suggestions that all Btu adjustments should be downwards from what otherwise would be the appropriate in-line price in the various pricing areas is not a proposal that we hold the line pending the just and reasonable area price determination but that we roll it back.

Of course, to the limited extent that our determination that the upward Btu adjustments are in the public interest as well as in-line will permit producers to charge higher rates than have been authorized under their temporary certificates, or to continue so to charge free of any refund obligations, this will result in some increase in the pipelines' actual or contingent gas purchase costs, although in the case of California, the impact would be so small as to be *de minimis.*[7] However, the suggestion of the California intervenors that the guideline prices set forth in Section 2.56(a) of our Regulations necessarily constituted the outer limit on the prices at which we would permanently certificate producers' sales, even where, as here, it is demonstrable that the in-line price in the area is higher, is without merit. Essentially, the guideline and in-line prices result from entirely separate considerations.

Btu adjustment base.—The parties to this proceeding have proposed three separate bases from which Btu adjustments are to be made effective. The producers urge that a base of 1,000 Btu's per cubic foot be adopted as representing the existing standard in contracts from the pricing areas involved herein. The California interveners seek a base that would approximate 1,200 Btu's and would in effect permit only downward adjustments. Initially, Staff supported a weighted average base to be determined for each pricing area from information in Standard Form 2 filed by pipelines. The proposed bases varied from 976 to 1,081 Btu's. During the proceeding the Commission initiated the Hugoton-Anadarko area rate case, and Staff determined that the average base for the five areas there involved would be 1,020 Btu's. Since this latter figure so closely approximated the traditional base of 1,000 Btu's, Staff, in its brief to the Examiner and subsequently, favored the latter. The Examiner was of the opinion that 1,000 Btu's was the most appropriate base.

The record in this proceeding establishes that, of the several hundred contracts involved herein, all provide for upward adjustments from 1,000 Btu's. Furthermore, permanent certificates in these pricing areas utilize that base. Clearly, 1,000 Btu's is the base that has gained acceptance in the areas now before us, and any attempt to provide another base would disrupt all contracts there. Rather than utilize the artificial standard proposed by the California interveners, we shall adopt the 1,000 Btu base as representing the in-line conditions for areas herein. Thus, we agree with the Examiner and with Staff that it is the base accepted by all contracting parties in the areas herein; that it is not designed to evade Commission pricing policies applicable to producers' sales; and that it is a convenient and ready reference point for purposes of the limited determination we make today. We do not, of course, express any opinion as to the appropriate base for area rate purposes. Furthermore, we do not necessarily intend the 1,000 Btu base as a national standard. For purposes of issuing certificates of public convenience and necessity in the pricing areas herein, we here adopt the 1,000 Btu base for upward adjustments if such adjustments are permitted by contract. Proportional or full percentage adjustments shall be made by multiplying the base price by a factor, the numerator of which is the heating valve of the gas and the denominator 1,000.

It is evident that if we are to permit the contract price paid for natural gas to be adjusted for Btu content of the gas, it is necessary to determine the standard, or basis, for measuring the heat content of the gas. The Commission currently requires that Btu content of gas purchased by pipelines be reported on a "wet" basis in Form 2. We note that this standard is accepted by the American Society for Testing Materials and the Natural Gas Industry. We shall require that the Btu content of the gas to be used in determining price adjustments shall be defined as the total heating value per standard cubic foot, as hereinafter specified.

---

[7] California consumers obtain most of their gas from the Permian Basin, which produces gas of predominantly higher Btu content than that of the Hugoton-Anadarko Basin. The Permian Basin is not involved in this proceeding. Of the areas involved herein, California consumers use only three percent of the total gas produced. Looking only at the upward provisions herein, the immediate impact of such provision on the California consumers would be only $6,690 per year. Based on an average annual consumption of 105 Mcf, this amounts to less than one-tenth of one cent for each general service customer.

Other matters.—We disagree with the Examiner on one further issue. Staff urges that a policy be adopted of requiring proportional downward adjustments where the parties provide only for upward adjustment. Such a requirement would reflect any changes in the Btu content of the gas sold, and it shall therefore be included as a condition in the certificate.

The California interveners propose a transportation cost adjustment to producers' prices under a formula designed to reflect in the price received by the producer the changes in transmission costs that result from changes in Btu content. Although changes in costs are something less than directly proportional, an increase in Btu content tends to decrease the volumes that must be transported to supply the same heating value, and to decrease the transmission costs associated herewith. The converse is also true. The Examiner held that the record in this case does not justify the transportation cost adjustment proposed. We agree. First, it is irrelevant to producer certificate matters because it relates solely to pipeline adjustments. In addition, because of the many variables and differences in pipeline companies and their operations respecting such matters as total mileage, load factor, capacity and the like, it would be administratively infeasible to attempt to lay down a rule or formula of general application in this area. We think that, for the present, this is a matter that is best left to such contractual arrangements as buyer and seller may provide.

The Examiner would condition Transwestern's contract to require that, in the event of extraction by the producers of higher Btu gases in conformity with the contracts, measurement of the Btu content for purposes of determining the price of the gas will be made at the plant outlet. We affirm this action in conformity with the Examiner's discussion.

All other arguments raised on exceptions and reply thereto are without merit, and are hereby rejected.

In conclusion, it is appropriate to observe, as the Examiner did, that should Btu adjustment provisions ever be used in a manner contrary to the public interest, we can take such action as may then be required. The extensive investigation in this proceeding indicates no such action is presently required.

The Commission further finds:

Upon consideration of the entire record in this proceeding, including the evidence adduced, the briefs and exceptions filed, and the Examiner's initial decision, said decision, to the extent not inconsistent herewith, should be adopted as the decision of the Commission in this case and the exceptions thereto should be denied, subject to the modifications indicated hereinafter.

The Commission orders:

(A) The initial decision of the Examiner issued herein on November 9, 1964 is, to the extent not inconsistent herewith, adopted as the decision of the Commission and shall become effective as of the date of issuance of this order.

(B) Contract provisions for upward Btu price adjustments from a base of 1,000 Btu per cubic foot are approved on a proportional or other basis that results in a price which does not exceed that resulting from the use of a proportional adjustment.

(C) The contracts in this proceeding that provide for upward price adjustments for Btu content are approved only on the condition that they also include a proportional downward price adjustment provision from a base no lower than

1,000 Btu, and amendments to be filed, where necessary, consistent with this condition.

(D) The Btu content of the gas used in computing the price adjustments approved herein shall be the number of British thermal units produced by the combustion, at constant pressure, of the amount of the gas which would occupy a volume of 1 cubic foot at a temperature of 60° F. if saturated with water vapor and under a pressure equivalent to that of 30 inches of mercury at 32° F. and under standard gravitational force (980.665 c.m. per sec. sec.) with air of the same temperature and pressure as the gas, when the products of combustion are cooled to the initial temperature of gas and air and when the water formed by combustion is condensed to the liquid state.

(E) The prices approved herein shall not exceed the applicable Statement of Policy No. 61–1 area guideline ceilings, as heretofore amended, as a result of any contractual provision other than the Btu adjustment.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON CONSOLIDATED APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND INVESTIGATION OF BTU ADJUSTMENT PROVISIONS IN PRODUCER CONTRACTS UNDER THE NATURAL GAS ACT

(Issued November 9, 1964)

LEVY, *Presiding Examiner:*

This proceeding is based on an order of the Commission issued May 28, 1963, 29 FPC 1079, consolidating approximately 250 producer certificate applications involving sales of natural gas from producing areas in the State of Oklahoma and adjacent fields, with an investigation under Section 14 of the Natural Gas Act of the impact of Btu adjustment provisions in producer contracts. The reason for the consolidation was described in the order as follows:

> In light of the fact that this large number of proceedings is awaiting disposal and each presents common issues with respect to provisions calling for Btu adjustments in producer contracts, hearings held on these applications on a consolidated record would serve the purpose of affording final disposition to these matters and provide the Commission with a valuable source of information upon which it could predicate some rulings in connection with Docket No. R–200. In order to adduce a complete record and a wide variety of views on the Btu issue from various segments of the industry, we will consolidate with the several producer applications an investigatory proceeding pursuant to Section 14 of the Act and make the pipeline purchasers of the gas subject to the producer applications, parties to this proceeding. (P. 1082.)

On December 4, 1963, 30 FPC 1409, the Commission denied a petition to stay the proceeding filed by Pan American Petroleum Corporation (Pan American) stating in part that its "primary purpose in instituting these proceedings is to dispose of independent producer applications presenting a common issue with respect to provisions calling for upward Btu adjustment in producer contracts." (P. 1410.) The Commission added that since the proceeding was focused solely on the necessity for and the propriety of these Btu provisions, it expected to obtain information of benefit in resolving the gas energy level question raised in Docket No. R–200.[1]

---

[1] A rule making proceeding initiated by the Commission on May 22, 1961 concerning certain proposed additions to the Commission's Statement of General Policy relating to certificate applications, rate filings, pipeline quality gas standards, delivery conditions, and certain price adjustments.

A series of prehearing conferences were held on July 29, 1963, October 1, 1963, and January 29, 1964, for the purpose of defining the issues, adopting a schedule for the service of testimony and the cross-examination of witnesses, and disposing of various motions for additional information and Commission orders relating thereto. Cross-examination of witnesses commenced on April 27, 1964 and concluded on May 15, 1964, with a record of 2,613 pages of transcripts, 50 exhibits, and 4 items by reference. Briefs were filed on behalf of the Producers, Pipelines, Pacific Lighting Companies, California Public Utilities Commission, Pennsylvania Public Utilities Commission and Staff, including individual briefs by Pan American, Superior, Sun Oil, Pioneer Production Sinclair, and six pipeline parties, Transwestern, Natural Gas, Northern Natural, Michigan Wisconsin, Panhandle, and Colorado Interstate.

At the request of the California Interveners, an oral argument was held before the Examiner on October 21, 1964 (Tr. 2648–2772).

The Btu Adjustment in Producer Contracts

The evidence in respect of the evolution of Btu adjustment provisions in producer contracts is in substantial agreement. These provisions are found in the six pricing areas[2] included in this proceeding, and described in the Statement of Policy 61–1. They are concentrated in southwestern Kansas and the Panhandle areas of Texas and Oklahoma. The development of these provisions has been strongly influenced by the low Btu content found in portions of the Hugoton gas field. For more than 30 years pipelines have been negotiating contracts in this area with downward Btu adjustment provisions to reflect the economic disadvantage of low Btu gas, and the necessity of enriching the pipeline stream either by the removal of inert gases or the addition of higher Btu gases or liquefied hydrocarbons. Without such blending or addition of higher Btu gas to achieve an acceptable pipeline gas stream, low Btu gas would be wasted despite its accessibility and availability to established pipeline systems. Upward adjustment provisions began to appear about 20 years ago, and as of January 1, 1963, are found in at least 621 of the 3,412 contracts in the five principal pricing areas involved in these proceedings. Ninety-eight percent of these contracts adjust upward from a base of 1,000 Btu. Seventy-eight percent of the contracts with a downward Btu adjustment use a 1,000 Btu base. While Btu adjustment provisions from a 1,000 Btu base are customary in these areas during the last 20 years, there is no standard or customary type of price adjustment. The most common method, used by five of the seven pipeline parties,[3] is the proportional or percentage type under which there is an upward or downward price adjustment from the specified Btu base level which varies directly with changes in the heating value of the gas.

---

[2] Oklahoma Panhandle, Oklahoma Other, Kansas, Texas Railroad Districts Numbers 9 and 10, Colorado and Utah.

[3] Staff witness Hefferon refers to an example taken from a contract with Panhandle Eastern Pipe Line Co:

> *Adjustment of Price:* If the heating value of the gas delivered to Buyer at any delivery point shall be less than 1,000 BTU per cubic foot, then the price payable for such gas delivered at such delivery point shall be proportionately reduced, and, if the heating value of such gas is greater than 1,000 BTU per cubic foot, then the price for such gas shall be proportionately increased. To determine such increased or reduced price, the applicable price provided for in Article X shall be multiplied by a factor, the denominator of which shall be 1,000 and the numerator of which shall be the heating value of the gas delivered at such delivery point, provided, however, notwithstanding anything herein to the contrary, the factor used in determining such increased price shall not in any event exceed 1.2 even though the heating value of the gas is found to be in excess of 1200 BTU per cubic foot (Tr. 490).

Michigan Wisconsin and Transwestern use a provision calling for a fixed price increment for each Btu above the base Btu level.[4] The actual Btu content of natural gas purchased by the pipeline parties in 1962 varies from a low of approximately 830 Btu's to a high of 1184 Btu's (Tr. 1027).

THE ISSUES

All parties agree generally that the value of natural gas to the consumer varies directly with its heat content measured in Btu's,[5] the thermal unit cost of transporting natural gas varies inversely with its Btu content, and that price adjustments based directly on variations in Btu's are in the public interest. They also agree that condensation due to the relatively high dew points of the heavier hydrocarbon constituents of high Btu gas does not pose a significant operational problem to the pipeline or distribution companies (Staff br. pp. 52–56). There is sharp disagreement, however, as to how, and to what extent, the base price should be adjusted for variations in Btu content. Specifically, the major areas of disagreement are (1) the Btu base from which the price adjustment should be made, and (2) the transportation cost adjustment, if any. There is also disagreement as to the scope of this proceeding and its relationship to R–200 and area rate proceedings.

Position of the Parties

1. The producers contend that a Btu price adjustment on a proportional basis, upward or downward, from a base of 1000 Btu per cu. ft., the most common provision, or such other base as may be specified in the contracts,[6] is in the public convenience and necessity and should be approved. The Staff does not dispute the greater value of higher Btu gas to the producer, pipeline, distributor and consumer, or the need for price adjustments consistent with differences in heating value. It argues, however, that any method of price adjustment must be consistent with Commission regulatory policies and, more particularly, the "hold the line" doctrine enunciated by the Supreme Court in the *CATCO* decision (360 U.S. 378). Consequently, Staff urges a base derived from the weighted average heating value of gas purchased in the particular 61–1 pricing area, rather than a 1000 Btu or any other contractually determined standard. This would provide, in Staff's view, a uniform thermal cost of gas consistent with the in-line price established by the Commission and the actual heating content of gas purchased by interstate pipelines in the particular pricing area.

The method used by the Staff to determine the weighted average Btu of natural gas purchased by the interstate pipeline parties within the pricing areas involved in this proceeding is based upon a compilation of information obtained from annual reports submitted by the pipeline companies (FPC Form No. 2) rather than information supplied by the pipeline parties in this proceeding in response to the Commission's order of May 28, 1963.[7]

---

[4] For an example from a Wisconsin Pipe Line contract:

> A base price of 17¢ per Mcf for gas having 1,000 BTU's per cubic foot plus 1/100¢ per Mcf for each additional BTU per cubic foot in excess of 1,000 to a maximum of 1200 BTU's per cubic foot effective on the date of last determination pursuant to Section 1(e) of Article X hereof. (Tr. 491.)

[5] The term "Btu" or British thermal unit is the amount of heat needed to raise the temperature of one pound of water 1° Fahrenheit (Tr. 2611).

[6] The contracts of six of the seven pipeline buyers designated as respondents in this proceeding include a 1000 Btu base. The seventh, Colorado Interstate, provides for a base of 1000 Btu in about 93 percent of its contracts, with a different and higher base in all of the remainder (Tr. 268). Michigan Wisconsin has the contract right to reject gas with less than 1000 Btu per cubic foot.

[7] This order required the pipeline companies' named respondents therein to provide information pertinent to the heat content of gas they purchased as specified in Appendix A attached to the order, *supra*, p. 1083.

This method, as well as the weighted average Btu standard itself, is attacked as unfair by the Producers on the ground that it will operate only to reduce the contract price. Where the formula justifies a higher than contract price, the Memphis-Mobile doctrine[8] will intervene to prevent collection. The weighted average formula is also criticized as based on inaccurate and insufficient data and basically unworkable. Staff's Btu adjustment formula is coupled with a recommendation that "an investigation be conducted similar to the instant proceeding in order to assure that there is flow-through by the pipelines of the benefits of high Btu gas to the ultimate consumer" (Staff br. p. 63).

A third approach—the so-called gold standard—is proposed by the Pacific Lighting Companies. Their witness Ross suggested that the highest Btu content of any substantial volume of gas sold in the relevant pricing area be designated the gold standard or Btu level entitled to the maximum ceiling price. California Public Utilities Commission's witness Way proposed an 1100 Btu standard for gas sold to the California companies, or a "predominantly optimum" standard similar to witness Ross' gold standard. Under this formula, a producer would receive the area ceiling price for gas equal to or above the gold standard or predominantly optimum Btu level. There would be a proportionate downward adjustment for lower Btu gas regardless of contract provisions or weighted average Btu content.

2. All parties agree that transportation costs may be affected by the Btu content of natural gas, as well as other factors, and that the utilization of higher Btu content gas results in a saving with respect to the transportation cost of heat energy per Mcf. Proceeding from this premise, Staff witness John Roy Johnson proposed a further price adjustment to reflect the alleged transportation cost savings incident to the utilization of higher Btu gas. Mr. Johnson developed a formula for the application of this principle by using the optimum peak-day capacity (volume) and related total unit cost of transportation for certain hypothetical pipelines shown in table 4 of his Exhibit No. 35. This cradle formula[9]—so designated by the producers because of the parabolic pattern of the points plotted on figure 8 of Staff's Exhibit No. 37 showing the percentage change in costs attributable to changes in volume for pipelines of varying diameters—is criticized by the producers as admittedly hypothetical and unrelated to the design or operation of any of the pipeline parties to this proceeding, or their actual circumstances. Pacific Lighting's witness Ross proposed certain modifications to the Staff's cradle formula which are criticized equally by the producers as theoretically unsound and administratively unworkable.

Finally, the Pacific Lighting Companies propose that the issuance of any permanent certificates in this proceeding be conditioned upon the outcome of R-200.

Btu Base and Price Adjustment Provisions

The record is clear that the customary and predominant base in the contracts containing Btu adjustment provisions of the various producer applicants in this proceeding is 1000 Btu. It is equally clear that these provisions, antedating producer price regulation by the Commission, grew out of, and were designed to meet, the wide variations in Btu content found in the Hugoton Field particularly, and the Oklahoma-Anadarko Basin generally, where large, accessible volumes of low Btu gas could be used by adjacent interstate pipelines only if blended with high Btu gas or processed so as to bring their Btu content up to acceptable pipeline levels. There is no evidence that they were designed to evade Commission pricing policy as expressed in 61–1.

---

[8] See *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332, and *United Gas Pipe Line Co.* v. *Memphis Light, Gas and Water Division*, 358 U.S. 103.

[9] $Y = \frac{X^2}{70}$ where Y is the percentage of cost increase and X is the plus or minus change in volume due to change in specific gravity and Btu.

The differences between the parties as to the appropriate Btu standard or base is not derived from any disagreement as to the basic geological, chemical, engineering, or operational facts. As noted in the Pacific Lighting Companies' initial brief, there is a remarkable consistency in the testimony presented.

> * * * all parties agree that the value of natural gas to the ultimate consumer is based on its heating value, that variations in Btu content of gas affect costs involved in transporting that gas through a pipeline and that an economic incentive is required to induce the producer to leave the high Btu gases in the pipeline stream instead of extracting and selling them as liquids. Likewise, all parties agreed that it is appropriate and in the public interest for producer prices to be adjusted depending upon the Btu content of the natural gas purchased and sold. (p. 5)

The different conclusions of the parties derive from their views as to the scope and function of this proceeding.

The California interveners reject the 1000 Btu base, or any contractually defined base, on the ground primarily that it is not cost oriented and that price increments for changes in Btu content should be allowed only to the extent that such changes in Btu content produce cost changes. This approach would be relevant if the in-line price from which the Btu adjustment is made were cost determined. This is not the case. As noted recently by Commissioner Ross: "In every single in-line case decided since the autumn of 1961, the Commission has steadfastly refused to consider costs" (Opinion No. 434, 32 FPC 34, *Shell Oil Co.* Dissent, p. 42). This is not an area rate proceeding or a proceeding to determine just and reasonable rates pursuant to Section 4 or 5 of the Natural Gas Act for the producer contracts involved in this proceeding.

The Commission noted in Opinion No. 434, *Shell Oil Company, et al.*, issued July 6, 1964, that:

> Although the underlying purpose of the Natural Gas Act is to underwrite just and reasonable rates to the consumer, the decision by the Supreme Court in *CATCO*[4] makes clear that a Section 7 proceeding does not require a finding that the initial rate itself be "just and reasonable." It is necessary only to find that the proposed sale, at the initial rate, is "required by the present or future public convenience and necessity." Under *CATCO* we are required to scrutinize proposed sales to determine whether the initial rates are "out of line" in which event " * * * the Commission in the exercise of its discretion might attach such conditions as it believes necessary."[5] In defining the "line" so referred to, the Court of Appeals for the Ninth Circuit stated:
>
> > Considered in this light, the "line" referred to in CATCO may properly be referenced to relevant existing producer prices under which substantial amounts of natural gas move in interstate commerce * * *
>
> Existing producer prices are relevant for comparative purposes only if they pertain to gas production in the same or analogous area and if other principal features of the contract are fairly comparable. * * * Disparate provisions relative to facilities to be provided and other services to be rendered should be given effect as well in determining the propriety of the analogy to rates under other existing contracts.[6] [Footnotes omitted]

Relative prices and contract provisions in related certificated contracts or comparability, not cost, is the appropriate standard, absent a conflict with or violation of regulatory policy. The in-line price as defined in the *CATCO* decision has already been determined for many of the pricing areas involved in this proceeding.[10] That determination was made by comparing contract prices with other relevant certificated sales. The relevant existing contract prices included the Btu adjustment clause within the bundle of considerations determining the ultimate contract price. The evidence in this proceeding clearly establishes that at the time Statement of General Policy No. 61-1 was adopted by the Commission, upward and downward Btu adjustments clauses were a customary and established price feature of these contracts under which substantial amounts of gas were moving in interstate commerce. The guide line prices were fixed with full knowledge of the existence and nature of these adjustment provisions, and specifically contemplated the possibility of price adjustments to "the basic contract price * * * as it becomes apparent that certain adjustments have general applicability in a specific area." The Statement of General Policy No. 61-1 reads in pertinent part as follows:

> Of necessity, we have not set forth the adjustments to these prices which must be made to take into account every possible provision of every contract which may affect the actual price, such as Btu adjustments, conditions of delivery, etc. The relevance of such adjustments to the basic contract price and the appropriate established price standard must be considered as each filing is made. *As it becomes apparent that certain adjustments have general applicability in a specific area, the area price standard will be revised and set forth in greater detail with regard to the exact sale conditions to which the rate applies.* [Emphasis added.]

The evidence is undisputed that Btu price adjustment provisions have general applicability in the pricing areas involved in this proceeding.

The California gold standard concept was originally presented in the Permian area rate proceeding (Docket No. AR61-1 *et al.*, 34 FPC 159) by witnesses Frazier and Jensen. However, there it represented a one or one and one-half cent premium above the average price for superior quality and value gas. Consequently, it is superior to pipeline quality gas which, as defined by the Examiner, is "gas that the pipeline can take into its system without material additional treating or compression" (34 FPC, p. 366). The price line envisaged by the Commission's Statement of Policy 61-1 is a price line applicable to pipeline not premium or optimum quality gas. The Commission specifically noted: "We should, however, make it clear that these present price standards apply to pipeline quality gas as that term is generally understood in each area * * *." The guide line or in-line price, is therefore, not a price for premium, gold standard, or optimum gas any more than it is a price for substandard gas below pipeline quality by reason of low Btu content, the presence of inerts, sulphur, water, or any other reason rendering it unacceptable for pipeline use without further cost and expense to the pipeline.

Thus, whatever the merits of the gold standard concept in a rate or rule making proceeding, it is not applicable or useful in a Section 7 determination of initial prices designed to afford standby protection pending rate adjudication consistent with the public convenience and necessity.

The Staff's weighted average concept is consistent with the philosophy of the *CATCO* decision which is designed to hold the price line generally at the price level under which comparable substantial volumes of gas were moving in interstate commerce at the time these contracts were negotiated. However, it presents serious administrative difficulties, discussed below, which must be evaluated carefully before it can be adopted and utilized as an operative regulatory standard. The price line *CATCO* concept is not confined to the base price, or the Btu adjustment, or to any other single element or component of the price package.

---

[10] These range generally from 15 cents in "Other" Oklahoma, to 17 cents in the Oklahoma Panhandle.

It represents the total consideration passing between buyer and seller. Nor does the price line represent the highest or lowest price obtained, but as previously indicated by the 9th Circuit Court of Appeals in *United Gas Improvement Co.* v. *Federal Power Commission*, 283 F. 2d 817, 824 (1960) cert. den., 365 U.S. 881, " * * * the price line is intended to reflect current conditions in the industry. Therefore, comparative prices upon which it is based must be prices under which a substantial amount of natural gas presently moves in interstate commerce."

The record in this proceeding suggests that Btu adjustment provisions, upward and downward, were part of the customary price package and reflected current industry practice and conditions in these pricing areas at the time these contracts were negotiated, and that substantial volumes of gas were, and have been, moving in interstate commerce under similar contracts. These provisions are not illegal, and, in the context presented in this proceeding, do not appear to violate any regulatory policy of the Commission.

The administrative difficulties with the Staff's weighted average formula derive as much from the method by which it is computed as from the way in which it is used. The weighted average is based on pipeline Form 2 reports rather than the Appendix A data furnished in this proceeding. Some of the pipelines measure Btu by well sample at the wellhead, some by calorimeter tests after processing, and others by estimates based on the isotherm line. Absent consistent methods in measuring and reporting, the results obtained are subject to question as inaccurate and of limited usefulness. Morever, the average itself varies widely depending upon the pricing area involved and the time period utilized. Staff averaged the four-year period from 1959–1962, with the following results: Kansas—976 Btu/cu. ft., Oklahoma Other—1081 Btu/cu. ft., Oklahoma Panhandle—1044 Btu/cu. ft., Texas District No. 9—1069 Btu/cu. ft., Texas District No. 10—1025 Btu/cu. ft. The Staff then computes a composite weighted average[11] for all of the pricing areas in this proceeding stating ". . . In view of the Commission's proposal to establish these counties [Hugoton-Anadarko area rate proceeding] as a single pricing area we feel that it would be appropriate to view them as a composite area for fixing a standard BTU level from which to make adjustments for the heat content of gas prior to the establishment of the just and reasonable area rates for the area." (Staff br. pp. 60–61.)

---

[11] See the following table:

AREA WEIGHTED AVERAGES FOR 1959-1962
(Excluding Texas No. 9)

Area	Mcf	Therms	Btu/Cu. Ft.
Total Kansas	1,787,160,714	17,447,560,786	976.3
Okla. Other	667,740,715	7,221,313,528	1,081.4
Okla. Pan	946,917,673	9,887,304,865	1,044.2
Tex. #10	1,877,733,271	19,248,519,607	1,025.1
Total Btu	5,279,552,373	53,804,698,786	1,019.1

AREA WEIGHTED AVERAGES FOR 1959-1962
(Including Texas No. 9)

Area	Mcf	Therms	Btu/Cu. Ft.
Total Kansas	1,787,160,174	17,447,560,786	976.3
Okla. Other	667,740,715	7,221,313,528	1,081.4
Okla. Pan	946,917,673	9,887,304,865	1,044.2
Tex. #9	164,707,149	1,760,296,838	1,068.7
Tex. #10	1,877,733,271	19,248,519,607	1,025.1
Total Btu	5,444,259,522	55,564,995,624	1,020.6

(Staff br. p. 61.)

The composite weighted average is 1019 Btu/cu. ft. excluding Texas Railroad District No. 9, or 1020 Btu/cu. ft. if District No. 9 is included. The weighted average for the area encompassed by the Hugoton-Anadarko area rate proceeding is 1015 Btu cu. ft. This compares with the 1013 Btu content, on a dry basis, of methane, the principal constituent of natural gas. Finally, the Staff concludes:

> In light of the fact that the weighted average BTU for this overall area so closely approximates the traditional BTU adjustment level of 1000 BTU/cu. ft. that has gained acceptance in this area, we feel that any effort to alter this level by the Commission prior to the establishment of just and reasonable rates for the area would not serve any useful purpose and only tend to disrupt hundreds of existing gas purchase contracts that have been negotiated within this area. (Staff br., p. 62.)

The use in these contracts of a Btu base level of 1000 Btu/cu. ft. plus a proportional upward price adjustment (or any other Btu adjustment not in excess thereof) is approved in this proceeding as consistent with the public convenience and necessity.[12] A lower Btu base level is acceptable only where the total price, including Btu adjustment, does not exceed the in-line price or the price that would result from the use of a 1000 Btu base. As noted by the Staff, the 1000 Btu base level[13] has general acceptance in hundreds of existing gas purchase contracts within the areas involved. It is a convenient and ready reference point, consistent with the therm rate (100,000 Btu), or the million Btu rate used by pipelines and distributors. Bearing in mind the stopgap nature of an initial price determination under Section 7, it is concluded that the theoretical merits of a weighted average Btu standard, prior to the determination of a just and reasonable rate, must yield in this proceeding to the practical advantages of the customary contract level of a 1000 Btu base standard.

These remarks nevertheless, are not intended to denigrate the development of weighted Btu average standard in any future proceeding. If the method of measuring and reporting Btu content can be standardized and simplified to the point where an accurate weighted average can be determined without undue hardship or difficulty, the advantages of a weighted average Btu adjustment base in determining a just and reasonable ceiling price or initial price may outweigh the administrative burdens incident to its determination. This is particularly true for pricing areas where the contract base is substantially lower than the weighted average Btu content. In this certificate proceeding, however, the limited significance, utility, and controversial nature of the results obtained are not worth the disruption incident to a departure from the customary 1000 Btu base provided by contract.

The California Interveners agree that the present impact of Btu adjustment provisions are minimal on prices currently being paid by California purchasers.[14] They are deeply concerned, however, with the extension of Btu adjustment provisions to new areas and new contracts and their use as a device to defeat regulatory efforts to hold the price line pending effective rate regulation. The evidence in this proceeding does not support such a finding in the Hugoton-Anadarko area in respect of these contracts where Btu adjustment provisions have been customary prior to the issuance of Statement of Policy No. 61–1. If, however, as feared by the California Interveners, these provisions spread to new areas and new contracts, and their use as a device to pierce the price line becomes apparent, the Commission can give serious consideration to the adoption of weighted average Btu base levels or maximum price adjustments either by amending the Statement of Policy No. 61–1, or in an R–200 proceeding. In such a posture, the advantages of a weighted average Btu adjustment base in holding the price line may well outweigh the administrative burdens and difficulties on the scales of the public interest.

---

[12] The base contract price, however, from which the Btu adjustment is made, cannot exceed the in-line or guide line price fixed by the Commission in Statement 61-1, whichever is lower.

[13] The Commission's Notice of Proposed Rulemaking in Docket No. R-200, issued May 22, 1961, proposed that "pipeline quality gas":

> "shall have a heating value of not less than one thousand (1,000) Btu per cubic foot when saturated with water vapor (*i.e.*, water saturated gas having a heating value per cubic foot of nine hundred seventy-five (975) Btu to one thousand and twenty-five (1025) Btu shall be deemed to comply with this requirement), but in no event shall buyer be required to accept natural gas having a heating value of less than nine hundred fifty (950) Btu per cubic foot."

[14] Less than 3 percent of all gas sold from the six pricing areas goes to California (Tr. 2297).

The Transportation Cost Adjustment

Staff's transportation cost adjustment formula is designed to reflect the transportation cost effect of changes in Btu content. The formula assumes that changes in Btu content will produce inverse changes in transportation costs; the higher the Btu content, the lower the unit cost of transmitting heat energy. Concededly, higher Btu gas will normally increase pipeline efficiency. The difficulty with the Staff's formula, however, lies in its attempt to isolate changes in Btu content from the many other factors that reflect and determine the actual cost of transmitting natural gas, and the inapplicability of the assumptions in the formula to the design and operation of the specific pipelines involved in this proceeding. The effect of changes in Btu content on transportation costs may be entirely offset or negated by changes in specific gravity, pressure, and design and operation of the particular pipeline. This is illustrated, in part, in the following table which shows the effect of changes in specific gravity as well as Btu content on specified gas samples, assuming a 16 cent base price, a 1000 reference Btu content, a reference specific gravity factor of .600, and Staff's assumed transportation cost of 12 cents per Mcf (Tr. 2018).

Price Adjustments

Sample gas	Proposal	Straight Btu adjustment	Transportation cost adjustment	Total adjusted price
		(¢)	(¢)	(¢)
750 Btu	Staff	−4.00	−4.95	7.05
0.600 gravity	Ross	−4.00	−4.00	8.00
950 Btu	Staff	−0.80	−0.91	14.29
0.621 gravity	Ross	−0.80	−0.84	14.36
1000 Btu	Staff		+0.12	16.12
0.581 gravity	Ross		+0.17	16.17
1000 Btu	Staff		−1.20	14.80
0.725 gravity	Ross		−1.10	14.90
1050 Btu	Staff	+0.80	+0.25	17.05
0.631 gravity	Ross	+0.80	+0.29	17.09
1100 Btu	Staff	+1.60	+0.66	18.26
0.663 gravity	Ross	+1.60	+0.59	18.19
1150 Btu	Staff	+2.40	+0.83	19.23
0.685 gravity	Ross	+2.40	+0.90	19.30
1084 Btu*	Staff	+1.34	+0.65	17.99
0.640	Ross	+1.34	+0.58	17.92

*Typical sample of gas sold by Pacific Lighting Companies. (See Br., Section F.)

Staff made no effort to apply its formula to the pipeline design capacity, specific gravity, or operations of any of the pipeline parties in this proceeding. As noted in Staff's brief:

> The record reflects that in this particular area a specific gravity higher than .65 should have been utilized in the various pipeline systems designed; whereas, a specific gravity factor of .6 was used in Exhibit 35 (Tr. 1919, 1953). Also staff witness Ellery Johnson assumed a 90 percent load factor

> in designing the various systems in his Exhibit 35 that were utilized by John Roy Johnson in the development of his formula to show the effect of varying BTU on the cost of transportation. The study submitted by the witness Brooks for a particular system appears to indicate that savings in the cost of transportation attributable to high BTU gas vary substantially with the particular load factor level at which a pipeline operates (Ex. 29, Tr. 1558). There are considerable variations in the load factors of the pipelines delivering gas from this area (Tr. 905, 1023, 1085, 1193).
>
> These deviations from the area norm appear to dampen any prospects of using the transportation cost adjustments in connection with the sales in the instant proceedings (Staff br. p. 23).

The Producers emphasize that a different cost study would be required for each pipeline, and that there is no simple solution to the problem in determining the effect of changes in Btu content on transportation costs. Operational factors may minimize or eliminate the effect of changes in Btu content and specific gravity on transportation costs. These include the utilization of unused compressor capacity and the stabilizing effect of blending the various supply sources into the main stream of the pipeline.

The Pacific Lighting Companies rejected the Staff's so-called cradle formula and developed their own variation described by its witness Ross as follows:

> The percentage derived by the formula proposed would of course vary with every variation in Btu and/or specific gravity, and would have to be computed monthly for every delivery and based on weighted averages for the month, hence the further importance of simplicity. Under the procedure suggested in my original testimony (page 14), and which would be equally applicable under the simplified procedure I now propose, the rolled-in or composite average unit cost of transmission for the entire pricing area would be used uniformly for all producer sales in the area, but multiplied by the percentages derived individually for each sale for each month. The purpose of this rolled-in basis for determining unit transmission cost is to achieve uniformity of adjusted ceiling (or reference) price within each pricing area for a given array of quality conditions. (Tr. 2326)

The Ross variation to the cradle formula is subject to the same limitations as the original formula and, as shown in the above table, produces similar price adjustments. It ignores the effect of pressure and supercompressibility and is not based on actual operating costs of the specific pipeline parties. By averaging transmission costs for all pipelines, it benefits producers with above average costs selling to a long line and penalizes producers with below average costs selling to short lines for local distribution. The formula is extremely complex, requires (so the witness states) a *Seaboard* type allocation to the various supply sources, and, as proposed, would be recomputed on a monthly basis (Tr. 1455–1458). Moreover, it has the inherent defect of being a cost adjustment to a price which is not itself cost determined, assuming the Btu base level is defined by contract or by a weighted average. In summary, the record in this proceeding does not justify the application of a transportation cost adjustment based either on the Staff cradle formula or the Ross variation.

The Transwestern Contracts

The unconditional certification of six Transwestern gas purchase contracts containing upward Btu adjustment clauses included in the consolidated applications[18] is questioned by the California Interveners. Under these contracts the sales take place at the wellhead, and while there is presently no extraction, the Producers reserve the option to process the gas within Transwestern's gathering system and to extract all of the Btu's in excess of 1,000. California Interveners allege that, in the event of extraction, consumers would be paying for Btu's lost in extraction and the producers would be receiving the services of Transwestern's gathering system and metering equipment free of charge. The Producers argue that this is a ghost issue because there is no evidence in this record that a plant will ever be built, that the financial impact on the Interveners is minuscule, and that the total effect of all of the contract provisions may in fact save Transwestern money.

---

[18] The Cabot Corporation, Docket No. CI61–711; Statex Corporation, Docket No. CI61–417; Monsanto Chemical Company, Docket No. CI61–713; Mayflo Oil Company, Docket Nos. CI61–538 and CI61–805; Union Oil Company of California, Docket No. CI61–323.

The contracts do not expressly state at what point the Producers' gas will be measured for Btu content for the purpose of determining Btu price adjustment, and Transwestern takes the position that such measurement is to be made at the tailgate of any extraction plant. It is not necessary in this proceeding to enter the thicket of interpreting the provisions of particular contracts. However, it is desirable to establish a basic policy in respect of upward price adjustment for Btu content; namely, that any upward Btu price adjustment be based on the Btu content of the gas received by the pipeline after any separation or extraction of liquids by the seller. This would require either that the measurement of the Btu content for price determination be made after extraction, or if, by reason of specific contract provisions, it is made at the wellhead, provision be made for the Btu's lost in processing. Accordingly, certification of these Transwestern contracts will be conditioned so as to require, in the event of extraction, that the measurement of the Btu content for price determination will be made at the plant outlet.

Flow Through

Staff is concerned that the benefits of the high Btu gas, paid for by an upward Btu price adjustment and charged to the ultimate consumer as part of the pipeline's purchased gas costs in its cost of service, will not be flowed through to the consumer. In Staff's view, this can occur through a reduction in the thermal content of the gas as a result of extraction of liquids by the pipeline without crediting the liquid revenues received to the pipeline's cost of service. It can also occur through the use of block rates in pipeline tariffs which permit the Btu content of the gas to vary within limits without changing the rate, and as a result of exchange agreements which permit volumes of different Btu level gas to be exchanged without adjustment or recognition of the differences in the Btu level of the gas streams exchanged. Accordingly, Staff recommends that an investigation be concluded similar to the instant proceeding in order to assure that there is flow through by the pipelines of the high Btu gas to the ultimate consumer (Staff br. p. 63).

Staff agrees that a credit of revenues from extraction to the pipeline's cost of service is tantamount to a flow through of the benefits of higher Btu gas to the pipeline's customers. This was the issue before the Commission in *Panhandle Eastern Pipe Line Company*, Opinion No. 344–A, decided August 20, 1964, 32 FPC 636, where the Commission, following court remand,[16] ruled that Panhandle must credit the net revenues from its mainline processing plants to its cost of service. The application of this principle to any reduction in the Btu content of gas included in the pipeline's cost of service will assure flow through of the benefits of higher Btu gas to the pipeline's customers. However, this determination can best be made not in a general investigation but in the pipeline rate proceeding where the cost impact of the particular pipeline operation, rate structure, and exchange agreements can best be evaluated. Accordingly, a general investigation would not be as useful as an individual rate proceeding, and none is recommended.

---

[16] *Panhandle Eastern Pipe Line Co. v. F.P.C.*, 305 F. 2d 763 (1962).

Similarly, the impact of extraction by the producer rather than the pipeline on Btu price adjustments can be evaluated in an area rate proceeding with greater depth than in a Section 7 certificate proceeding where evidence of production costs and financial requirements may not be admissible. (See *Sun Oil Co.* Opinion No. 445, dec. October 26, 1964, 32 FPC 1183, at p. 1185.)

Scope of the Proceeding

There was considerable confusion during the hearing as to the scope of this proceeding and its relationship to Docket No. R-200 and area rate proceedings. Disagreement has continued through the briefs and oral argument.

The Producers see this as a consolidated certificate proceeding in which the sole issue is the effect to be given to the Btu adjustment provisions. They request unconditional certification of all the consolidated applications.

The California Interveners emphasize the investigative aspects of this proceeding under Section 14 of the Act. They oppose giving unconditional effect to the Btu adjustment provisions in these producer contracts, or any determination now of the propriety of these provisions. They see this proceeding as a source of information for future rulings in R-200 and area rate proceedings, and urge that any certification be conditioned upon a future determination of the ultimate propriety of the Btu adjustment provisions in R-200. The Pennsylvania Public Utilities Commission suggests that specific standards and price adjustments be determined simultaneously with area rates.

The Commission's order of May 28, 1963 provided for both a consolidated certificate proceeding under Section 7 and an investigatory proceeding under Section 14 of the Act. The hearing was intended to afford "final disposition" to the consolidated certificate applications under Section 7 of the Act and, in addition, to provide information of benefit to the Commission in resolving the gas energy level question raised in Docket No. R-200. The hearing has met the investigatory and informational objectives of the Commission's order (See Pacific Lighting br. p. 5). The objective of affording final disposition to the consolidated certificate applications under Section 7 of the Act, however, cannot be achieved by deferring determination of the initial price effect to be given the Btu adjustment provisions in these producer contracts to an R-200 rulemaking determination at some indeterminate future date. R-200 is a far broader proceeding covering rulemaking in respect of all certificate proceedings, rate filings, pipeline quality gas standards, and delivery conditions, as well as price adjustments.

The Commission's 1963 Annual Report states in pertinent part:

> Another significant step in the disposition of producer certificate cases was the institution on May 28, 1963, of an investigation and hearing into the necessity, propriety, and impact of upward Btu price adjustment clauses in producer contracts. In this connection, the Commission set hearings on 247 certificate applications where the main issue was the presence of a Btu price adjustment clause in the related contracts. The resolution of the Btu issue in this investigation will dispose of not only the foregoing applications but also provide guidelines for the disposal of future applications where the upward Btu price adjustment is an issue, eliminate a refund situation, and permit the issue of permanent certificates. (p. 126)

The findings and conclusions in this proceeding, however, are without prejudice to the treatment of Btu adjustment provisions in R-200, or area rate proceedings, or even in future certificate proceedings on a different record. As noted earlier, if it becomes apparent that Btu adjustment provisions are being used as a device to defeat Commission efforts to hold the price line, the Commission may very well amend the Policy Statement 61-1, so as to restrict the price impact of Btu adjustment provisions in producer contracts. Moreover, the Commission is free, particularly in an area rate proceeding, to consider further the utility of establishing a maximum just and reasonable price on the basis of the so-called gold standard or predominantly optimum Btu standard, or to utilize the Staff's weighted average formula as the reference point from which to make Btu price adjustments.

In summary, the Examiner has concluded that the consolidated applications should be certificated provided the six Transwestern contracts containing upward Btu adjustment provisions are conditioned so as to require measurement of the Btu content at the plant outlet in the event of extraction.

ADDITIONAL FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in this proceeding including the pleadings, the evidence adduced, the briefs filed, and the oral argument, it has been found and concluded, in addition to the findings and conclusions heretofore stated, that:

(1) Each Applicant is a "natural-gas company" within the meaning of the Natural Gas Act and is engaged in the sale and delivery of natural gas in interstate commerce for resale for ultimate public consumption subject to the jurisdiction of the Commission.

(2) The proposed sales of natural gas are subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act, are required by the public convenience and necessity; and a certificate therefor should be issued as hereinafter ordered and conditioned.

(3) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

ORDER

WHEREFORE, *it is ordered*, subject to review by the Commission on appeal or upon its own motion, as provided by its Rules of Practice and Procedure, that:

(A) Certificates of public convenience and necessity are hereby issued to the Applicants named in the caption of this decision, on the conditions set forth herein, authorizing the sale of natural gas in interstate commerce for resale for ultimate public consumption, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, all as more fully described in the applications.

(B) The certificates granted in paragraph (A) above are not transferable and shall be effective only so long as Applicants continue the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable Rules, Regulations, and orders of the Commission.

(C) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or of Part 154 of the

Regulations thereunder. Such grant is without prejudice to any findings or order which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the Applicants or any one of them. Further, the action in this proceeding shall not foreclose or prejudice any further proceedings or objections by the Commission relating to the operation of any price or related provision in the gas purchase contracts here involved.

(D) The certificates herein issued to The Cabot Corporation, Docket No. CI61–711; Statex Corporation, Docket No. CI61–417; Monsanto Chemical Company, Docket No. CI61–713; Mayflo Oil Company, Docket Nos. CI61–538 and CI61–805; Union Oil Company of California, Docket No. CI61–323, are conditioned so as to require, in the event of extraction, that the measurement of the Btu content for price adjustment will be made at the plant outlet.

WILLIAM C. LEVY,
Presiding Examiner.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP65–339

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 11, 1965)

On April 22, 1965, El Paso Natural Gas Company (Applicant) filed in Docket No. CP65–339 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of natural gas to Cascade Natural Gas Corporation (Cascade) for transportation to and resale and general distribution in La Conner, Washington and environs, all as more fully set forth in the application.

The proposed sale and delivery of natural gas will be made at the outlet of Applicant's existing Sedro-Wooley Meter Station in Skagit County, Washington. No additional facilities are proposed to be constructed by Applicant.

Applicant proposes sales to Cascade on both a firm and interruptible basis. The third year annual gas requirements of Cascade are estimated to be 27,923 Mcf, with peak day requirements estimated to be 844 Mcf. Cascade will construct approximately 4 miles of pipeline for transportation of the gas from its Sedro-Wooley-Anacartes sales lateral to La Conner, and will construct the necessary distribution facilities in La Conner.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on June 10, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 11, 1944, in Docket No. G–288 (4 FPC 486).

(2) The sale and delivery of natural gas hereinbefore described, as more

fully described in the application in this proceeding, are to be made in interstate commerce, subject to the jurisdiction of the Commission, and are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The sale and delivery of natural gas proposed by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, El Paso Natural Gas Company, to sell and deliver natural gas to Cascade Natural Gas Corporation as hereinbefore described, as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), and (e) of Section 157.20 of such Regulations.

(C) The sale and delivery of natural gas hereby authorized shall be undertaken, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations, within six months from the date on which this order issues.

(D) Before commencing the sale of natural gas authorized herein, El Paso shall file with the Commission appropriate evidence that Cascade has obtained all necessary state and local authorization for its proposed service.

OPINION NO. 458-A

INDIANA & MICHIGAN ELECTRIC COMPANY, DOCKET NO. E-7089

OPINION AND ORDER DENYING REHEARING

(Issued June 11, 1965)

Syllabus

1. Commission *rejects* contention it erred in ordering Respondent to file wholesale sales contract in effect on April 16, 1963 [initiation date of show cause proceeding]; Respondent is free to file contracts in effect at an earlier date and is not aggrieved that Commission fixed a later date. P. 1253.
2. On facts of record, April 16, 1963 was a date on which American Electric Power System and Indiana Michigan were operating in manner which made all of latter's wholesale sales jurisdictional. P. 1253.
3. Question of staying compliance with filing requirement of order is completely independent of Respondent's right to challenge its validity; schedules can be filed with reservation fully protecting Respondent's rights in event it prevails on appeal and minimal expense required for

requisite filing could not conceivably constitute irreparable damage within meaning of *Virginia Petroleum Jobbers*. P. 1253.

4. Commission *denies* application for rehearing.

Commissioner Bagge *not participating*.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor. Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

BLACK, *Commissioner:*

Indiana & Michigan Electric Company (IM) on May 14, 1965, filed an application for rehearing of our Opinion No. 458 and Order Determining Jurisdiction, issued April 14, 1965, 33 FPC 739, wherein we determined that IM's sales of electrical energy for resale to certain municipalities and cooperatives in Indiana and Michigan are sales in interstate commerce subject to our jurisdiction under the Federal Power Act. Essentially, IM's application restates points previously raised in its briefs and adequately considered and disposed of in our order. However, in denying its application, the following additional comments are appropriate.

IM's two principal contentions are that in finding its sales are in interstate commerce, the Commission has applied a legalistic and governmental test rather than a scientific and engineering one and that in any event the critical sales in issue are exempt from Commission regulation since they utilize facilities used in local distribution of electrical energy. We have discussed these arguments at length in our initial opinion in this proceeding. We conclude that neither point is well taken and that no useful purpose would be served by their reexamination here.

IM suggests that we were in error in ordering it to file its wholesale sales contract in effect on April 16, 1963, the date on which the show cause proceeding was initiated. It argues that under the law it is required to file the contracts in effect when jurisdiction attaches and that under the Commission's theory of the case they may have occurred sometime in the 1940's. The short answer to this contention is that IM is free to file its contract in effect at any earlier date, and that it is not aggrieved by the fact that the Commission fixed a filing date which may well be later than the date which could have been chosen. On the basis of the facts of this record, April 16, 1963, was a date on which the AEP system and IM were operating in a manner which make all of IM's wholesale sales jurisdictional.

Our opinion of April 14 ordered IM to file its contracts in effect as of April 16, 1963, with each of the 24 municipal and cooperative customers, within 60 days from the date of that decision which would be June 13, 1965. IM has asked that we stay this requirement for a further 60-day period to give it time to perfect an appeal from our opinion and order. We think it clear that the question of staying compliance with the filing requirement is completely independent of IM's right to challenge the validity of the order in the courts. It obviously can file its rate schedules with a reservation which will fully protect its rights in the event it should prevail upon appeal and it is equally clear to us that the minimal expense required in performing the requisite filing requirements could not conceivably constitute irreparable damage to IM within the meaning of *Virginia Petroleum Jobbers Ass'n* v. *F.P.C.*, 259 F. 2d 921 (CADC). However, in view of the fact that most of the original 60-day period has already expired, we shall extend the time for filing these contracts until July 1, 1965. Since IM has been on notice since April 14 of this filing requirement and has not suggested that the mechanics for compliance with the order requires any extension, this period should prove more than adequate.

The Commission further finds:

(1) The assignments of error and grounds for rehearing set forth in the application for rehearing filed by IM in this proceeding present no facts or legal principles which would warrant any change or modification in the Commission's Opinion No. 458 except as specified below.

(2) The time for filing rate schedules as required by our order of March 18, 1965, should be extended as provided below.

The Commission orders:

(A) The application for rehearing filed by IM is hereby denied.

(B) The time for filing rate schedules as provided in paragraph (A) of our order of April 14, 1965, is hereby extended until July 1, 1965.

Commissioner Bagge *not participating.*

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP65-332

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND ACCEPTING TARIFF SHEETS FOR FILING

(Issued June 11, 1965)

On April 19, 1965, Northern Natural Gas Company (Applicant) filed in Docket No. CP65-332 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities and the sale and delivery of natural gas to Ancell Gas Company, Inc. (Ancell) for resale as irrigation pump fuel, all as more fully set forth in the application in this proceeding.

Applicant proposes to construct and operate a pipeline tap in Gaines County, Texas, on its 26-inch pipeline which extends from its Hobbs Compressor Station in Lea County, New Mexico, to its Plains Measuring Station in Yoakum County, Texas. Applicant will sell up to 1,170 Mcf of gas per day to Ancell at an initial rate of 23 cents per Mcf. Annual volumes are estimated to be 143,100 Mcf in the third year of service. Pursuant to a contract, dated March 3, 1965, between the parties, gas delivered during the period October 27 to March 27 shall be subject to interruption in whole or in part by Applicant. Volumes delivered during the period March 27 to October 27 shall not be subject to interruption.

The cost of the proposed facilities is estimated to be $260. Of this estimated amount, Ancell will contribute $150.

On April 23, 1965, Applicant tendered for filing its Original Sheet Nos. 102 through 112, inclusive, providing for the proposed sale to Ancell.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed

At a hearing held on June 10, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-280 (3 FPC 967).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) Applicant's Original Sheet Nos. 102 through 112, inclusive, to its FPC Gas Tariff, Original Volume No. 2 should be accepted for filing to become effective on the date of this order.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Northern Natural Gas Company, to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the sale and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 6 months from the date on which this order issues.

(D) Applicant's Original Sheet Nos. 102 through 112, inclusive, to its FPC Gas Tariff, Original Volume No. 2 are hereby accepted for filing to become effective on the date of this order.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

NORTHERN STATES POWER COMPANY, DOCKET NO. E-7223

ORDER AUTHORIZING ISSUANCE OF PROMISSORY NOTES

(Issued June 11, 1965)

Northern States Power Company (Applicant) filed an application on April 30, 1965 with the Federal Power Commission seeking an order pursuant to Section 204 of the Federal Power Act authorizing it to issue, from time to time, promissory notes in amounts not exceeding an aggregate of $27,000,000 outstanding at any one time to evidence short-term borrowing from commercial banks.

Applicant, a corporation organized under the laws of the State of Minnesota with its principal business office at Minneapolis, Minnesota, owns and operates utility properties and furnishes electric service at retail in 426 communities and adjacent territories and electric energy at wholesale for resale in 31 additional communities and at wholesale to rural electric cooperative associations and other utility companies located in Minnesota, North Dakota and South Dakota.

According to the application, promissory notes will be issued on various days and for various periods of time, but no note will mature more than twelve months after date of issue or renewal nor shall the maturity date of any note be later than August 31, 1966. Applicant states that the interest rate will be a rate that to the best knowledge and belief of the officers making the borrowings, does not exceed the prime loan interest rate at the time and place of making.

Applicant represents that it is its present intention, if, in the opinion of its directors and officers, market and economic conditions are favorable, to obtain funds for the prepayment of all or substantially all of its promissory notes described above by offering to the holders of its Common Stock in August of 1965 the right to subscribe for one share of Common Stock for each 20 shares held. Applicant expects this rights offering to produce about $27 million of new capital. The Applicant also expects to issue other permanent securities in 1966.

According to the application, the proceeds from the bank borrowings to be evidenced by the promissory notes described above will be added to the general funds of the Applicant to pay in part the expenditures made and to be made in 1965 in connection with the Applicant's construction program. Included among Applicant's principal expenditures for its 1965 construction program are approximately $3 million for construction of its Allen S. King plant in Oak Park Heights, Minnesota, $4.3 million for construction of the 58,000 kw generating plant at Faribault, Minnesota, $2.3 million for the Pathfinder atomic power plant of 66,000 kw capacity near Sioux Falls, South Dakota, $1.2 million for the 100 mile 345 kv transmission line from Red Rock to Adams, Minnesota, and $18.5 million for electric distribution facilities. These expenditures are estimated to amount to $51,600,000.

Written notice of the application has been given to the Minnesota Railroad and Warehouse Commission, the North Dakota Public Service Commission, and the South Dakota Public Utilities Commission and to the Governor of each of those States. Notice has also been given by publication in the Federal Register on May 13, 1965 (30 F.R. 6603), stating that any person desiring to be heard or to make any protest with reference to the application, shall file petitions or protests on or before May 25, 1965, with the Federal Power Commission, Washington, D.C., 20426. No protest, petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued May 3, 1965, Northern States Power Company, Docket No. E-7202 (33 FPC 942).

(2) The proposed issuance of Promissory Notes in the aggregate principal amount of $27,000,000, all as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) The proposed issuance of Promissory Notes in the aggregate principal amount of $27,000,000, all as described above, will be in excess of 5% of the par value of the other securities of Applicant, and, therefore, will not be exempt by virtue of Section 204(e) from the requirements of Section 204(a) of the Act.

(4) Applicant is not organized and operating in a State, under the laws of which the issue here involved is regulated by a State Commission within the meaning of Section 204(f) of the Act, and the proposed issuance is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(5) The proposed issuance of Promissory Notes will be exempt from the competitive bidding requirements of Section 34.1a of the Commission's Regulations under the Federal Power Act by reason of Paragraph 34.1a(a)(2) thereof.

(6) The proposed issuance of securities, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility, and which will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purposes.

(7) The period of public notice given in this matter is sufficient.

The Commission orders:

(A) The proposed issuance of Promissory Notes in the aggregate principal amount of $27,000,000 outstanding at any one time, whether an original issue or a renewal note, upon the terms and conditions and for the purposes set forth in the application, all as described above, is hereby authorized, subject to the provisions of this order.

(B) This authorization is expressly conditioned upon the final maturity of all notes to be issued pursuant thereto being not later than August 31, 1966.

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost or any other matter whatsoever now pending or which may come before this Commission.

(D) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect to any security to which this order relates.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY, DOCKET NO. CP65-301

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued June 14, 1965)

On March 25, 1965, Central Illinois Public Service Company (Applicant) filed in Docket No. CP65-301 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Panhandle Eastern Pipe Line Company (Panhandle) to establish physical connection of its natural gas transmission facilities with the facilities proposed to be constructed by Applicant, and to sell and deliver natural gas to Applicant for resale and distribution in Alvin, Henning and Bismarck, Vermilion County, Illinois and their environs, all as more fully set forth in the application.

Applicant proposes to construct and operate distribution systems in each of the three towns, plus 7.45 miles of 2- and 4-inch pipeline extending from the requested delivery point of Panhandle to the three communities.

Total estimated volumes of natural gas involved to meet Applicant's annual and peak day requirements in the third year are stated to be:

Town	Annual Mcf	Peak day Mcf
Alvin	14,705	135
Henning	17,765	163
Bismarck	30,555	280
Total	63,025	578

Total estimated cost of Applicant's proposed construction is $189,200, and will be financed with internally generated funds.

Panhandle has filed no objection to the issuance by the Commission of an order as requested by Applicant.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

The Commission finds:

(1) Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G–254 (4 FPC 1081).

(2) Applicant is legally authorized to construct and operate the proposed facilities and to engage in the local distribution of natural gas to the public, as proposed, within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest that Panhandle be directed to establish physical connection of its transmission facilities with the facilities proposed to be constructed by Applicant, and to sell and deliver up to 578 Mcf of natural gas per day to Applicant for resale and distribution as hereinbefore described, upon the terms and conditions of this order.

(4) The requirement that Panhandle serve Applicant, as hereinafter ordered, will not place an undue burden upon Panhandle, require it to enlarge its transportation facilities, or impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Panhandle Eastern Pipe Line Company be and it is hereby directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant, and to sell and deliver up to 578 Mcf of natural gas per day to Applicant as hereinbefore described, as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) Panhandle shall report to the Commission in writing the date of commencement of service to Applicant within 10 days thereof.

(C) Applicant shall be prepared to receive service from Panhandle as directed herein, within one year from the date on which this order issues.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

TOWN OF ECLECTIC, ALABAMA, DOCKET NO. CP65-278

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued June 14, 1965)

On March 5, 1965, the Town of Eclectic, Alabama (Applicant) filed in Docket No. CP65-278 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Southern Natural Gas Company (Southern) to establish physical connection of its natural gas transmission facilities with the facilities proposed to be constructed by Applicant, and to sell and deliver natural gas to Applicant for resale and distribution in Eclectic, Elmore County, Alabama and environs, all as more fully set forth in the application.

Applicant proposes to construct and operate a natural gas distribution system in Eclectic, and approximately 9.3 miles of 4-inch transmission line extending therefrom in a southerly direction to a proposed point of interconnection with Southern's south line.

Applicant's estimated third year annual and peak day requirements are 35,542 Mcf and 471 Mcf, respectively.

The total estimated cost of the proposed project is $283,000, and will be financed through the issuance and sale of revenue bonds.

Southern filed an answer in this proceeding on March 19, 1965, as modified May 6, 1965, stating it had no objection to the granting of the requested order for service.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

The Commission finds:

(1) Southern Natural Gas Company, a Delaware corporation having its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order dated October 6, 1942, in Docket No. G-296 (3 FPC 822).

(2) Applicant, the Town of Eclectic, Alabama, is legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Southern to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicant, and to sell and to render natural gas service to Applicant, as set forth in the application and as hereinafter ordered and conditioned.

(4) Applicant should be prepared to receive natural gas from Southern, as proposed, within one year from the date on which this order issues.

(5) The requirements that Southern serve Applicant, as proposed, will not place any undue burden upon Southern nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Southern Natural Gas Company be and it is hereby directed to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to render natural gas service to Applicant, all as hereinbefore described and as set forth in the application.

(B) Southern shall report to the Commission in writing the date of commencement of service to Applicant, within ten days thereof.

(C) This order is conditioned upon Applicant being prepared to receive natural gas from Southern, as proposed, within one year from the date on which this order issues.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

EL PASO NATURAL GAS COMPANY, CP64-211, CP62-176; SOCONY MOBIL OIL COMPANY, INC., CI62-825; PHILLIPS PETROLEUM COMPANY, CI64-719; THE PURE OIL COMPANY, CI64-1085; THE ATLANTIC REFINING COMPANY, CI64-1130; GULF OIL CORPORATION, CI64-1153; SKELLY OIL COMPANY, CI64-1225; MIDWEST OIL CORPORATION, CI64-1429; DALCO OIL COMPANY, CI64-1442; W. WATSON LAFORCE, CI65-61; GEORGE T. ABELL, CI65-878; M. B. RUDMAN, ET AL., CI65-930

ORDER CONSOLIDATING PROCEEDINGS, GRANTING INTERVENTION AND DENYING MOTION TO RESCIND TEMPORARY CERTIFICATE AND TO DISMISS APPLICATION

(Issued June 14, 1965)

By notices of March 2, and April 27, 1965, the matter presented by the above-designated docketed applications were consolidated for a May 11, 1965 hearing. That hearing was subsequently postponed until further notice.

The notices of March 2, and April 27, consolidated the application of El Paso Natural Gas Company (El Paso) filed in Docket No. CP64-211, with those of the above-captioned independent producers. Dates of March 30, and May 25, 1965, were prescribed for petitions to intervene.[1]

A petition for leave to intervene in these consolidated proceedings and in each individual docket with the exception of Docket Nos. CI65-878 and CI65-930 was filed March 29, 1965, by San Diego Gas & Electric Company.

A petition for leave to intervene in these consolidated proceedings and in each individual docket with the exception of Docket No. CI65-878 was filed by Pacific Gas & Electric Company on March 29, 1965.

A petition for leave to intervene and a notice of intervention in these consolidated proceedings and in every individual docket were filed, respectively, by Southern California Gas Company and Southern Counties Gas Company of California, jointly, and by the People of the State of California and the Public Utilities Commission of the State of California.

A petition to intervene in these consolidated proceedings and in only the application in Docket No. CP64-211 was filed by Gulf Pacific Pipeline Company (Gulf Pacific). Phillips Petroleum Company on April 13, Gulf Oil Company on April 16, Dalco Oil Company on April 19, Pure Oil Company on April 20, and Skelly Oil Company on April 23, 1965, filed answers in opposition to intervention in these proceedings by Gulf Pacific.

---

[1] The notice of April 27, concerned material amendments to several of the above-listed independent producer applications filed subsequent to the original notice of March 2, 1965, and the consolidation of the additional filings of George T. Abell and M. B. Rudman, *et al.*, in Docket Nos. CI65-878 and CI65-930. Pursuant to this latter notice persons not having previously intervened on March 30, were requested to do so by May 25, 1965.

Gulf Pacific is an applicant competitive with El Paso in the comparative proceedings in *Transwestern Pipeline Company, et al.*, Docket No. CP63–204, *et al.* Gulf Pacific contends that the facilities for which permanent certification is sought by El Paso in the present proceedings in Docket No. CP64–211 are generally the same as those proposed by El Paso in the aforementioned comparative proceedings.[3] Contending that the filing of duplicate applications by El Paso for essentially the same facilities is improper, Gulf Pacific asserts that not only should the temporary certificate issued December 11, 1964, be rescinded, but that the application itself should be dismissed.

The application of El Paso in the aforementioned competitive proceedings, in Docket No. CP63–204, *et al.*, while including supply facilities generally the same as involved herein are *allegedly* required for two distinct purposes. In the competitive proceedings El Paso proposes construction and operation of these facilities *solely* to indicate an ability to attach reserves to supply up to an additional 575,000 Mcf of natural gas daily to distributors in California. In its present application El Paso asserts a need for substantially the same facilities solely to augment overall system reserves, without any further sales. It is possible, therefore, that in the interval of time from the filing of its application in the comparative proceeding, the alternative need of these same facilities developed. It is a contested matter that should be determined at a formal hearing.

The filing of amendments to applications in the competitive proceeding was barred after November 14, 1963, by Commission order of August 22, 1963, 30 FPC 533, in that proceeding, to offset any disruptive effect there. If capable of substantiation, El Paso's filing of an additional application in Docket No. CP64–211, for generally the same facilities, but for a separate and distinct purpose does not, at this time, appear disruptive of the comparative proceeding. There appears therefore to be no good cause to delay proceedings in this present application until after Commission decision in the latter proceedings.

As a matter of sound administrative procedure, the filing or consideration of two or more applications for the same facilities is generally not proper. El Paso claims, however, that the gas involved in the applications here in issue will be of great value to its system operations regardless of whether it is found to be necessary as part of its gas supply should we decide to certificate its alternative proposal in *Transwestern Pipeline Company, et al.*, Docket No. CP63–204, *et al.* It asserts further that a number of the contracts have provisions which leave the producers free to sell their gas elsewhere if no certificate is granted by December 31, 1965, and that even if the *Transwestern* case *supra* is decided by that date, it is quite possible that such a decision would not involve certification of these sales. We think that in these circumstances a separate hearing on the applications consolidated here is appropriate. We shall require El Paso to show that the need for the facilities and reserves proposed herein is consistent with the market and reserve showing presented by El Paso in the comparative proceeding. El Paso, must also show that the acquisition of reserves and construction and operation of facilities as proposed are consistent with the public convenience and necessity independent of its applications in the *Transwestern* case.

Gulf Pacific also seeks to rescind the temporary certificate issued December 11, 1964, to El Paso for a portion of the facilities involved herein. Gulf Pacific contends that this grant of a temporary certificate was contrary to Section 2.57

---

[3] Hearings in these proceedings have concluded and a briefing period through August 2, 1965, was prescribed by the Presiding Examiner.

of the Rules of Practice and Procedure. The provisions of that section, in relation to the temporary certification granted for the comparatively minor enlargements or extensions, do not require a previous notice or hearing. To preclude any possibility that any interest of Gulf Pacific was or will be adversely affected by the grant of this temporary certificate, or by issuance of any permanent certificate, Gulf Pacific will be granted intervention in all matters involved herein. In addition, Gulf Pacific may renew its motions to rescind the temporary certificate and to dismiss the application at the conclusion of the hearing in these proceedings.

One further application shall be considered herein. On January 30, 1962, El Paso filed an application in Docket No. CP62–176 pursuant to Section 7 of the Natural Gas Act to construct and operate facilities for the purchase and transportation of natural gas in Pecos County, Texas, all as more fully set forth in the application on file with the Commission and open to public inspection. That application is directly related to the matter described above, and therefore that docket is consolidated herein. This application was previously noticed by the Commission on May 24, 1962, 27 F.R. 5157 (1962) (Published June 1, 1962) and a temporary certificate for construction and operation of the facilities therein was issued September 27, 1962. Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C., 20426 in accordance with the Rules of Practice and Procedure (18 CFR 1.8 or 1.10) on or before June 30, 1965. Those parties granted intervention by this order will be considered as intervenors in all the matters in these presently consolidated proceedings. Those parties therefore, need not refile for intervention in the additional and individual docket consolidated by this order unless they desire to do so.

The Commission orders:

(A) The matters involved in the application filed in Docket No. CP62–176 are related to the matters involved in these proceedings and are hereby consolidated for formal hearings.

(B) Good cause has not been shown by Gulf Pacific Pipeline Company for granting its motions to rescind the temporary certificate issued to El Paso Natural Gas Company in Docket No. CP64–211; to dismiss El Paso's application therein; or to delay these proceedings until after Commission decision in the proceedings in *Transwestern Pipeline Company, et al.*, Docket No. CP63–204, *et al.* The motions are denied without prejudice, however, to Gulf Pacific renewing its motions at the conclusion of the hearing in this proceeding. After El Paso Natural Gas Company has submitted the information requested by our staff which is necessary to evaluate the proposal a date for hearing will be fixed by subsequent order of the Commission.

(C) The aforementioned petitioners are hereby permitted to intervene in these consolidated proceedings and in the individual dockets as requested, subject to the rules and regulations of the Commission: *Provided, however*, that the participation of each intervener shall be limited to matters affecting asserted rights and interests as specifically set forth in their petitions for leave to intervene; And, *Provided, further*, that the admission of each intervener shall not be construed as recognition by the Commission that it might be aggrieved because of any order or orders of the Commission entered in these proceedings.

(D) The motions of Gulf Oil Company, Skelly Oil Company, Dalco Oil Company, Pure Oil Company and Phillips Petroleum Company in opposition to the petition of Gulf Pacific Pipeline Company to intervene in these proceedings are denied.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

HUMBLE OIL & REFINING COMPANY, G-9287, ET AL.; UNITED FUEL GAS COMPANY, RP65-22 AND TEXAS EASTERN TRANSMISSION CORPORATION, RP65-27

ORDER REJECTING APPLICATION FOR REHEARING AND DENYING REQUEST FOR RECONSIDERATION

(Issued June 14, 1965)

Texas Eastern Transmission Corporation (Texas Eastern) and United Fuel Gas Company (United Fuel) filed on May 20 and May 21, 1965 respectively, applications for rehearing of the Commission's "Order Releasing Refunds In Part" issued April 21, 1965, 33 FPC 830, in *Humble Oil & Refining Company*, Docket No. G-9287, *et al.* That order, in carrying out the procedure outlined in the order[1] which approved the settlement of Humble's rate proceedings, directed the release of those portions of the Humble refund which would flow through to the limits of our jurisdictional reach and ordered the retention of the remainder.

Texas Eastern and United Fuel urge in their applications for rehearing that the Commission's order is legally and equitably unsound insofar as it requires their suppliers to retain and defer the flow through of certain funds to them at this time. The parties thus ask that we determine their entitlement to these funds on the basis of their pleadings. Such a procedure was considered and rejected by the Commission in an order[2] denying rehearing of the retention requirement in the United Gas Pipe Line Company settlement. In that order the Commission rejected an application for rehearing by Texas Eastern and stated:

> We do not believe it necessary or appropriate to consider these claims here, since they are all considerations which Texas Eastern can restate and which we will consider in reaching our final determination upon the basis of the factual record made in the hearing to be held in this matter * * *
>
> Texas Eastern will, of course, be fully heard on all relevant claims before we reach any conclusion adverse to its claims to entitlement to the refunds from United. We reiterate that we have not yet determined whether it is or is not entitled to retain any or all of such amounts.
>
> However, Texas Eastern's apparent view that the Commission must decide the validity of its claims on the pleadings and cannot in the exercise of its discretion defer such determination until after it can do so in the light of a full hearing record in an ancillary proceeding in which other interested parties will also have an opportunity to present factual information and legal arguments they may deem material is clearly lacking in merit. Accordingly, since an application for rehearing does not lie under Section 1.34 of our Rules of Practice and Procedure from interlocutory actions of the Commission and Texas Eastern has advanced nothing to persuade us that we should abandon the course of action prescribed or indicated in Paragraphs (C) and (D) of our order of December 23, 1964, we shall reject

---

[1] Order Conditionally Approving Rate Settlement Proposal, Severing and Terminating Proceedings, and Prescribing Refunds, *Humble Oil & Refining Company*, issued July 8, 1964, Docket No. G-9287, *et al.*, 32 FPC 49.

[2] Order Rejecting Application for Rehearing and Denying Request for Reconsideration, issued February 19, 1965, *United Gas Pipe Line Company*, Docket No. RP61-18, *et al.*, 33 FPC 304.

the application for rehearing and deny it, considered as a petition for reconsideration.

The foregoing determination and conclusion apply with equal weight to the instant applications of Texas Eastern and United Fuel.

The Commission orders:

(A) Texas Eastern's and United Fuel's applications for rehearing of our order issued April 21, 1965, are hereby rejected.

(B) Texas Eastern's and United Fuel's pleadings classified as petitions for reconsideration are hereby denied.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., and Carl E. Bagge.

NORTHERN NATURAL GAS COMPANY, DOCKET NOS. CP64-255 (PHASE I) AND CP65-188

ORDER AMENDING ORDERS ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 15, 1965)

On April 28, 1965, Northern Natural Gas Company (Applicant) filed in Docket Nos. CP64-255 (Phase I) and CP65-188 an application to amend the orders of the Commission issued in said dockets on December 21, 1964, 32 FPC 1491 and March 31, 1965, 33 FPC 659, respectively, authorizing the construction and operation of facilities for the transportation and sale of natural gas. By the application to amend the Applicant seeks authorization to install and operate a 12,500 Hp turbine compressor unit at its Mullinville, Kansas Compressor Station in lieu of two 3,400 Hp reciprocating units now authorized for the said Station, all as more fully set forth in the application to amend.

The proposed substitution of compressor units will effect a saving of $166,500 in investment as well as in operating costs. Initial investment in the turbine unit will be $1,800,500 as compared with $1,967,000 for two 3,400 Hp units.

Due notice of the subject application to amend and opportunity for hearing has been given by publication in the Federal Register on May 12, 1965 (30 F.R. 6554), in Docket No. CP65-188 and on May 14, 1965 (30 F.R. 6666) in Docket No. CP64-255. No protest, petition to intervene, or notice of intervention has been filed herein.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's orders issued in said dockets on December 21, 1964 and March 31, 1965, respectively, be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's orders issued December 21, 1964 in Docket No. CP64-255 and March 31, 1965 in Docket No. CP65-188, be and the same are hereby amended by authorizing Applicant to install and operate one 12,500 Hp turbine compressor unit at its Mullinville Compressor Station in lieu of two 3,400 Hp previously authorized in said dockets as stated above.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

DORCHESTER GAS PRODUCING COMPANY, DOCKET NO. G–18671

ORDER GRANTING MOTION FOR PARTIAL RELEASE OF TRUST FUNDS

(Issued June 16, 1965)

Dorchester Gas Producing Company (Dorchester) on May 7, 1959, filed a proposed rate increase from 8¢ to 17.598¢ per Mcf, designated as Supplement No. 5 to its FPC Gas Rate Schedule No. 1, for the sale of gas to Northern Natural Gas Company (Northern) from the Panhandle Field, Carson and Gray Counties, Texas. The proposed rate was suspended in Docket No. G–18671 until November 7, 1959, at which time it was placed in effect subject to refund under a trust agreement.[1] All of the increased revenues collected under the 17.598¢ per Mcf rate have been deposited in trust.

By order issued November 19, 1964, 32 FPC 1339, in Docket No. RI64–749, *et al.*, Dorchester's request for the issuance of an order instituting a general rate investigation was denied. We there indicated, however, that we would give Dorchester some relief by permitting it to file an agreement and undertaking to assure the refund of any excess charges in Docket No. G–18671 in place of the present trust arrangement for those amounts collected between 8¢ and 11¢ per Mcf.

Dorchester on May 11, 1965, filed a motion requesting partial release of those amounts collected between 8¢ and 11¢ per Mcf which are now held in trust. Specifically, Dorchester desires to limit the allowed release of monies in trust to only that part of the total which the holders of the mortgage notes[2] are entitled to receive. Under its proposal the remainder of the monies collected between 8¢ and 11¢ per Mcf, which Dorchester and others than the note holders would be entitled to receive including money which Dorchester would be required to pass on to its royalty owners and co-owners, is to remain in the trust fund. Dorchester requests that, of the $2,129,112.76 now in trust representing collection of the difference between 8¢ and 11¢ per Mcf together with related interest earned, $1,715,929.70 be released and passed on to the noteholders. The remaining $413,183.06 will continue to remain in trust. Dorchester also requests that in the future the trustee under its trust agreement in Docket No. G–18671 be directed to release each month to the trustee for the noteholders the monies which the noteholders are entitled to receive.

The proposal of Dorchester is not inconsistent with the provisions of the November 19, 1964, order, and therefore we deem it appropriate to approve the proposal as hereinafter ordered. There is one minor problem, however, that should be clarified here. The agreement and undertaking submitted by Dorchester with its proposal provides, among other things, for refunds "with interest if required", from April 1, 1965 with respect to amounts collected between 8¢ and 11¢ per Mcf prior to that date. We think it appropriate to specify an interest rate of seven percent from April 1, 1965, with respect to those amounts collected prior to that date in the event it is determined that any portion of the amounts collected from 8¢ to 11¢ per Mcf is not justified.[3] This will avoid any possible confusion on this point in the future.

---

[1] The trust agreement with the First National Bank in Dallas as trustee, was executed on November 25, 1959, and amended on March 30, 1961. Under the policy then in effect, no interest obligation was imposed on Dorchester with respect to any refunds that might be required because the increased amounts were to be placed in trust.

[2] The First National Bank in Dallas is also trustee under the Deed of Trust, Mortgage and Assignment dated July 1, 1954, between the Nalam Corporation and First National Bank in Dallas.

The Commission orders:

(A) The First National Bank in Dallas, as trustee under the trust agreement dated November 29, 1959, as amended March 30, 1961, in Docket No. G-18671, shall release to the First National Bank in Dallas, as Trustee under the Deed of Trust, Mortgage, and Assignment, dated July 1, 1954, between the Nalam Corporation and First National Bank in Dallas, (1) forthwith the amount of $1,715,929.70 and (2) periodically each month, commencing with the month of April 1965, an amount equal to 96 percent of Dorchester's net working interest (but not excluding the portion dedicated to the production payment held by Dorchester Gas Company) in the sum computed by multiplying 3¢ per Mcf times the number of Mcf's sold by Dorchester to Northern for which the trustee received payment in such month. Except as specifically provided herein, the trust agreement in Docket No. G-18671 shall remain in full force and effect.

(B) The agreement and undertaking filed by Dorchester in Docket No. G-18671 to assure the refund of any excess charges that may be determined in such proceeding with respect to those amounts collected between 8¢ and 11¢ per Mcf is hereby accepted for filing.

---

[3] The seven percent interest requirement is applicable only to those amounts collected from 8¢ to 11¢ prior to April 1, 1965, which are released from trust. It is not applicable to those amounts which will remain in trust.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

RESERVE OIL AND GAS COMPANY,[1] DOCKET NO. G-18570, ET AL.[2]

ORDER REJECTING OFFER OF SETTLEMENT

(Issued June 16, 1965)

On March 15, 1965, Reserve Oil and Gas Company (Reserve) filed an offer of settlement, which is amended on May 13, 1965, which we now have before us for consideration. The offer relates to sales of natural gas made under fourteen of Reserve's currently effective FPC Gas Rate Schedules in various fields in Texas Railroad Commission District Nos. 2, 3 and 4. In summary, the settlement proposal as filed by Reserve provides:

(1) elimination of any favored-nation, price redetermination and periodic escalation clauses contained in eleven of its rate schedules with provisions for settlement rates at or below 15¢ per Mcf for the remaining life of the respective contracts, and settlement rates at or below 14.6¢ per Mcf for the other three rate schedules with the right to file for 1.0¢ periodic escalations which are to be contractually authorized every five years commencing November 11, 1968, as detailed in the Appendix hereto;

---

[1] Successor to Producing Properties, Inc.

[2] The additional dockets involved herein are set forth in the Appendix hereto.

(2) that Reserve would make full refund of all amounts collected subject to refund above the settlement rates; and

(3) that it would eliminate a contract provision whereby it could reduce the present maximum delivery pressure requirement of 1200 psig to 600 psig for the last ten years of the contract from four of the rate schedules involved herein.

However, Reserve's FPC Gas Rate Schedule Nos. 1 and 2 are for sales to Union Texas Petroleum, A Division of Allied Chemical Corporation (Union) which gathers and processes the gas, along with other volumes purchased in the area, in its Winnie Gasoline Plant prior to sale of the residue volumes to Texas Eastern Transmission Corporation at a delivery point approximately twelve miles from the plant.

As stated in the order issued in *Clegg & Hunt* (Operator), *et al.*, Docket No. RI60–405, 33 FPC 808 (April 16, 1965) where gas is gathered and processed by the purchaser prior to ultimate sale to a natural gas pipeline company for transmission in interstate commerce, the area price levels set forth in the Statement of General Policy No. 61–1, as amended are applicable to the sale of residue gas after processing, *Foster Petroleum Corporation*, Docket Nos. RI64–17 and RI64–24, 30 FPC 672; *H. N. Burnett*, Docket No. RI64–334, 30 FPC 1384-A (order issued November 22, 1963) and *H. F. Sears*, Docket Nos. G–10494 and G–10752, 31 FPC 585. Here, the area price levels are applicable to sales by Union to Texas Eastern. Consequently, the 14.6¢ settlement rate proposed by Reserve herein under its Rate Schedule Nos. 1 and 2 is not acceptable.

Additionally, it is to be noted that Reserve proposes under its FPC Gas Rate Schedule Nos. 21 and 29 a settlement rate of 15¢ per Mcf of natural gas for sales to Tennessee Gas Transmission Company in Texas Railroad District No. 4, and to delete the favored-nation and price redetermination provisions from the contracts if any be contained. However, examination of the Commission's files reveals that no deliveries of natural gas are presently being made under said rate schedules. Therefore, the provisions of the Second Amendment to the Statement of General Policy No. 61–1, 24 FPC 1107, are inapplicable. Consequently, the proposed settlement rates for these sales are unacceptable. A proper settlement rate for these sales would be 14.0¢; the applicable increased rate ceiling. In its amendment, filed May 13, 1965, Reserve stated that it is "unwilling to sever Rate Schedule Nos. 1 and 2 from its company-wide Offer of Settlement and would be unwilling to accept an order approving such Offer conditioned upon the elimination of Rate Schedule Nos. 1 and 2 therefrom." Therefore, we shall reject Reserve's proposal, even though Reserve's settlement offer is acceptable under the Second Amendment to the Statement of General Policy No. 61–1, as amended, 29 FPC 589, except as to Rate Schedule Nos. 1, 2, 21 and 29. However, Reserve may file, such proposals as it deems fit, which are in accordance with the Statement of General Policy No. 61–1, as amended.

The Commission finds:

It is necessary and proper in carrying out the provisions of the Natural Gas Act and the Regulations thereunder to reject the offer of settlement filed by Reserve, as amended.

The Commission orders:

The offer of settlement filed by Reserve in these proceedings on March 15, 1965, as amended on May 13, 1965, is hereby rejected, without prejudice to the filing of settlement offers as indicated above.

APPENDIX

DOCKET NO G-18570, ET AL., RESERVE OIL AND GAS COMPANY

Rate Schedule & Supp. No.	Purchaser	Docket No.	Effective Date	Rates[1]		
				Approved	Suspended	Settlement
	Texas Railroad District No. 3					
1-1	Union Texas Petroleum	G-18570	11-4-59	13.6	14.6	[4] 14.6
2		RI64-789	12- 2-64	-----	15.6	-----
2-1	do	G-18570	11- 4-59	13.38069	14.38069	[4] 14.6
2		RI64-789	12- 2-64	-----	15.38069	-----
	Texas Railroad District No. 2					
20-12	Texas Eastern Transmission Corp.	RI63-343	7-18-63	13.8733	14.3733	[2] 14.0
23-12	do	RI63-344	7-18-63	13.8733	14.3733	[3] 14.0
27-10	do	RI63-344	7-18-63	13.8733	14.3733	[2] 14.0
32-9	do	RI63-345	7-18-63	13.8733	14.3733	[3] 14.0
33-10	do	RI63-345	7-18-63	13.8733	14.3733	[3] 14.3733
34-7	do	RI63-345	7-18-63	13.8733	14.3733	[3] 14.3733
35-6	do	RI63-345	7-18-63	13.8733	14.3733	[3] 14.3733
36-7	do	RI63-345	7-18-63	13.8733	14.3733	[3] 14.3733
39-9	do	RI63-344	7-18-63	13.8733	14.3733	[3] 14.0
37-5	United Gas Pipe Line Co	RI61-79	2-19-61	7.596	14.5	[4] 14.5
	Texas Railroad District No. 4					
21-5	Tennessee Gas Transmission Co.	G-19902	4- 1-60	11.90337	14.87589	[5] 15.0
6		RI60-347	10-21-60	-----	[6] 17.02416	-----
29-3	do	G-19888	4- 1-60	11.90337	14.87589	[5] 15.0
4		RI60-348	10-21-60	-----	[6] 17.02416	-----

[1] Cents per Mcf at 14.65 psia.

[2] Reserve proposes to delete the periodic escalation provisions. Other price escalation provisions were previously eliminated.

[3] Reserve proposes to delete the periodic escalation provisions and will eliminate a pressure reduction provision which has become effective under the contract.

[4] Reserve proposes to delete the favored-nation and/or price redetermination provisions. Periodic escalations would be rescheduled to provide for 1.0 cent per Mcf every five years commencing November 11, 1968.

[5] Reserve proposes to delete the favored-nation and/or price redetermination and periodic escalation provisions. Rate is subject to a 0.21931 cent dehydration charge deduction.

[6] Non-dehydrated gas. Buyer has deducted 0.21931 cent dehydration charge.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

TRUNKLINE GAS COMPANY v. THE SUPERIOR OIL COMPANY, DOCKET NO. RI64-273; THE SUPERIOR OIL COMPANY, DOCKET NOS. G-18168,[1] G-20435[1] AND G-20577[2]

ORDER ON REMAND

(Issued June 16, 1965)

By order issued March 9, 1964, 31 FPC 507, in the above-entitled proceedings, the Commission denied Trunkline Gas Company (Trunkline) the relief requested by it in a petition for declaratory order filed on October 25, 1963, as supplemented on November 13, 1963. In its petition, as amended, Trunkline had requested the Commission to determine that The Superior Oil Company's (Superior) favored-nation increases involved here were unlawful and to permit it to pay Superior on the basis of the increased rate ceilings set forth in the policy statement pending determination of Superior's just and reasonable rates. Trunkline was required by that order to recompute and pay to Superior the amounts due, computed on the basis of the increased rates in effect subject to refund herein. By order issued April 15, 1964, 31 FPC 934, the Commission modified the March 9 order so as to require Trunkline to pay interest at 7% to the date of payment on those amounts properly payable but not tendered by Trunkline to Superior. The Commission by order issued June 9, 1964, 31 FPC 1511, refused to require Trunkline to pay interest on the total amount payable to Superior under the increased rates involved here. The Commission ruled that Superior should have accepted Trunkline's unconditional tender of a portion of the total amount due, and in view of its failure to do so no additional interest should be required of Trunkline.

---

[1] Consolidated with the area rate proceeding in Docket No. AR64-2, *et al.*, by order issued November 27, 1963, 30 FPC 1354.

[2] Consolidated with the area rate proceeding in Docket No. AR61-2, *et al.*, by order issued May 10, 1961, 25 FPC 942.

Superior then filed a timely petition for court review (CA5, No. 21796) with respect to the Commission's refusal to order Trunkline to pay interest on the total amounts payable to it. Thereafter, the Commission filed a Motion for Remand of this case to permit it to reconsider its decision in light of the filed rate doctrine. That motion was granted by the Court. In view thereof, we think it appropriate to give Superior, Trunkline and the Commission Staff an opportunity to brief the issues involved on remand, *i.e.* those relating to the filed rate, the propriety of permitting an exception thereto and the precedential effect of permitting such an exception. In connection with the briefs, we note that Superior filed a court brief prior to the remand of this case. Superior, if it so desires, may use its court brief as its initial brief.

The Commission orders:

Initial briefs may be filed herein on or before June 28, 1965 and reply briefs may be filed on or before July 12, 1965.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

PORTLAND GENERAL ELECTRIC COMPANY, PROJECT NO. 2195

ORDER APPROVING REVISED EXHIBIT L DRAWINGS

(Issued June 17, 1965)

On June 3, 1965, Portland General Electric Company filed for Commission approval revised Exhibit L drawings for its Faraday development, Project No. 2195, located on the Clackamas River in Clackamas County, Oregon. The exhibit was filed pursuant to Article 34 of the license order issued by the Commission on April 23, 1965, 33 FPC 876.

The revised Exhibit L drawings show the results of the studies made by the licensee in order to provide for a concrete gravity diversion dam at the Faraday development in lieu of a concrete arch structure originally authorized by the Commission.

The above mentioned project changes have been reviewed by our staff and have been found to be safe and stable.

The Commission finds:

(1) The following described Exhibit L drawings, conform to the Commission's rules and regulations and should be approved as part of the license for the project:

Faraday Development: Exhibit L

Sheet No.	F.P.C. No. 2195	Showing
27	-88	Faraday Diversion Dam-Plan.
28	-89	Faraday Diversion Dam Elevation and Sections.

(2) The description for the proposed Faraday Development as contained in subparagraph (b) of ordering paragraph (A) in the April 23, 1965 order referred to above, be deleted and amended to read as follows:

> A proposed concrete gravity type dam consisting of an ogee spillway section about 56 feet high with crest at elevation 516 feet surmounted by 2 drumgates each 10 feet high and 125 feet long which may be extended to normal pool elevation 526 feet, a pier between the 2 drum gates 5 feet wide and 12 feet high above the crest, and two short nonoverflow abutment sections with top at elevation 544 feet; a reservoir with a capacity of about 550 acre-feet; a concrete lined tunnel 2,450 feet long; an unlined canal 3,300 feet long leading to a forebay; 6 penstocks supplying 5 generating units totaling 15,250-KW in an indoor powerhouse and one 19,200-KW unit in an outdoor powerhouse; and appurtenant facilities.

The Commission orders:

(A) The revised Exhibit L drawings are hereby approved as part of the license for the project.

(B) The description of the Faraday Development contained in subparagraph (b) of ordering paragraph (A) of the Commission's license order issued April 23, 1965 Project No. 2195 is hereby deleted and amended to read as indicated in finding (2) above.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgment of the acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP65-294

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT

(Issued June 17, 1965)

On March 23, 1965, United Gas Pipe Line Company (Applicant) filed in Docket No. CP65-294 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain natural gas facilities, all as more fully set forth in the application.

Applicant proposes to abandon (1) in place 1.0 mile of 12-inch pipeline, and (2) by sale 0.5 mile of 12-inch pipeline to United Gas Corporation, downstream from Applicant's Gulfport City Gate in Harrison County, Mississippi, used to serve its parent, United Gas Corporation, the distributor in Gulfport, Mississippi. Upon abandonment approval United Gas Corporation will integrate the portion purchased into its distribution system. Applicant will receive $11,851 representing the depreciated original cost of the portion of the line sold to United Gas Corporation.

After due notice, no petition to intervene, notice of intervention, or protest to the granting of the application has been filed.

At a hearing held on June 16, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued November 10, 1942, in Docket No. G-232 (3 FPC 863).

(2) The facilities proposed to be abandoned, as hereinbefore described and as more fully described in the application herein, are used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and approval thereof should be granted as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment of the facilities hereinbefore described, as more fully described in the application in this proceeding, are hereby granted to Applicant, United Gas Pipe Line Company.

(B) Applicant shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (A) above within 10 days of such abandonment.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP64-255 (PHASE I)

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 18, 1965)

On May 3, 1965, Northern Natural Gas Company (Applicant), filed in Docket No. CP64-255 (Phase I) an application to amend the order of the Commission issued December 21, 1964, 32 FPC 1491, in Docket No. CP64-255 (Phase I), which among other things authorized Applicant to construct and operate facilities to provide initial natural gas service to the Mesabi Iron Range area of Minnesota. By the application to amend the Applicant seeks authorization to (1) change the routing of the system to avoid crossing taconite deposits, which will lengthen the pipeline to the Erie Mining Plant by three miles, eliminate 2.5 miles of pipeline to Hoyt Lakes, and require the construction and operation of 1.2 miles of pipeline to the Oglebay-Norton Plant near Forbes, make other minor changes in routing, resulting in a net decrease of 3.1 miles of proposed pipeline, and (2) increase the diameter of two segments of pipeline to be constructed, namely (a) approximately 13.6 miles of pipeline from 10-inch to 12-inch, extending in a westerly direction from the terminus of the 20-inch line to the Hibbing take-off, and (b) approximately 9.7 miles of line from 8-inch to 10-inch extending in a general northeasterly direction to the Erie Mining Plant.

The increase in pipe size is necessary to deliver the volumes of gas which are now estimated to be required by the ore processing plants. There will be no increase in the estimated cost of construction by reason of the substitution of the larger diameter pipe.

Due notice of the subject application to amend and opportunity for hearing has been given by publication in the Federal Register on May 14, 1965 (30 F.R. 6666). No protest, petition to intervene or notice of intervention has been filed concerning this amendment.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued December 21, 1964, in Docket No. CP64-255 (Phase I) be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued December 21, 1964, in Docket No. CP64-255 (Phase I) be and the same is hereby amended so as to authorize the change in routing of pipeline as proposed and an increase in diameter of 13.6 miles of pipeline from 10-inch to 12-inch and 9.7 miles of pipeline from 8-inch to 10-inch as proposed in the subject application to amend.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

COLUMBIAN CARBON COMPANY, DOCKET NOS. G-11751 AND RI61-395

ORDER DENYING MOTION TO TERMINATE PROCEEDINGS

(Issued June 21, 1965)

Columbian Carbon Company (Columbian) on May 14, 1965, filed a motion to terminate the above-entitled proceedings which relate to increased rates of 26¢ and 27¢ per Mcf, respectively, for sales under its FPC Gas Rate Schedule No. 1 to Hope Natural Gas Company (Hope) in Mingo, McDowell and Logan counties, West Virginia. Since Columbian was authorized to abandon these sales by order issued December 4, 1962,[1] Docket Nos. G-11751 and RI61-395 cover locked-in periods which involve, according to Columbian, $46,345 in amounts collected subject to refund.

In support of its motion Columbian states, among other things, that the Commission has terminated suspension proceedings involving similar or higher rates in the same area,[2] and claims that it should receive similar treatments.

---

[1] Since that time Columbian has also disposed of all of its other gas and oil properties in the United States.

By order issued December 4, 1962 (which was subsequent to the orders cited by Columbia in purported support of its motion), we refused to grant a similar motion by Columbian to vacate these proceedings. As we have previously indicated,[3] a prior decision does not preclude our analysis of all pertinent factors pertaining to particular proceedings and the continued re-examination of pertinent policies affecting the public interest. In approving settlements we have consistently adhered to the increased rate ceiling level as the proper level for settlement rates, except in special circumstances which are not involved here. No reason has been advanced by Columbian which would justify our approval of a rate in excess of the 25¢ per Mcf increased rate ceiling applicable to sales from this area. We must therefore deny Columbian's motion to terminate.

The Commission orders:

The motion to terminate the above-entitled proceedings filed by Columbian on May 14, 1965, is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP65-291

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 21, 1965)

By Commission order issued in this docket on May 6, 1965, 33 FPC 972, Petitioner was granted a certificate of public convenience and necessity authorizing the sale of natural gas to Intermountain Gas Company (Intermountain) for resale and distribution in Eagle, Star, and Middleton, Idaho and their environs.

On May 25, 1965, Petitioner filed herein a petition to amend said order by deleting therefrom the volumetric limitation of 500 Mcf per day contained in ordering paragraph (A) thereof on page 973.

Petitioner is presently delivering natural gas to Intermountain for resale in communities other than the three involved in this proceeding. The gas for service to those communities is delivered through a single meter station. Petitioner's proposal as set forth in its application was to deliver the gas for service in the three additional communities through the same meter station. The imposition of a volumetric limitation would necessitate the construction by Petitioner of an additional meter station for separate measurement of the volumes of gas for the three communities involved. For this reason the limitation appears inappropriate, and should be removed.

The Commission orders:

(A) The order of the Commission issued on May 6, 1965, in Docket No. CP65-291, is hereby amended by deleting therefrom the volumetric limitation of 500 Mcf per day contained in ordering paragraph (A) thereof on page 973.

(B) In all other respects said order shall remain in full force and effect.

---

[2] *Columbian Carbon Company*, Docket No. G-19782 issued March 1, 1961, 25 FPC 365; *Allegheny Land and Mineral Company*, Docket No. G-19030, issued May 2, 1961, 25 FPC 886.

[3] See *Ravencliffs Development Company*, Docket No. G-17312, *et al.*, order issued August 21, 1962, 28 FPC 349; *United Carbon Company*, Docket No. RI61-269, order issued November 7, 1961, 26 FPC 715.

Before Commissioners: David S. Black. Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

GULF OIL CORPORATION, RI65-599[1] AND RI65-600; SHELL OIL COMPANY, RI65-475, RI65-476, RI65-477 AND RI65-478; AMERADA PETROLEUM CORPORATION, RI65-552 AND RI65-553

ORDER DENYING MOTIONS TO DISMISS INCREASED RATE FILINGS

(Issued June 21, 1965)

Philadelphia Electric Company (Philadelphia) on May 14, 1965, filed three motions requesting the Commission to dismiss the proposed increased rates filed by Gulf Oil Corporation (Gulf), Shell Oil Company (Shell), and Amerada Petroleum Corporation (Amerada), respectively, which are under suspension in the above-entitled proceedings.

Philadelphia in its motions claims that the increased rate filings involved here should be rejected as not being just and reasonable nor in conformity with the standards established by the Commission's Statement of General Policy No. 61-1 issued September 28, 1960, as amended. These claims are based on certain cost evidence presented in the area rate proceedings in Docket Nos. AR61-1 and AR61-2 in comparison with the average company-wide revenue realizations and the average unit revenues in South Louisiana of each of the three producers involved here.

There is no legal justification for rejecting these producer increases at this time. Even assuming that we had the power to reject a filing without affording the producer an opportunity for hearing, it would not be proper to do so on the basis of a portion of the evidence presented in a case which has not been decided, particularly where conflicting evidence has also been presented. See *Mississippi River Fuel Corp. v. F.P.C.*, 202 F. 2d 899 (CA3).

The Commission orders:

The motions filed by Philadelphia on May 13, 1965, in the above-entitled proceedings are hereby denied for the reasons set forth above.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

MIDHURST OIL CORPORATION, DOCKET NOS. G-18150, RI62-414 AND RI64-167

ORDER ACCEPTING OFFER OF SETTLEMENT, PERMITTING WITHDRAWAL OF NOTICE OF CHANGE, REQUIRING FILING OF NOTICES OF CHANGE, CONTRACT AMENDMENT AND REFUNDS, AND SEVERING AND TERMINATING PROCEEDINGS

(Issued June 21, 1965)

On May 27, 1965, Midhurst Oil Corporation (Midhurst) submitted an offer of settlement in these proceedings pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure. It supplemented its offer by letter on the same date. The offer involves two sales of natural gas to Texas Eastern Transmission Corporation (TETC). One is a sale made under Midhurst's FPC Gas Rate Schedule No. 12 at a presently effective rate, being charged and collected subject to refund, of 15.6¢ per Mcf in the Mud Flats Field, Aransas County, Texas Railroad Commission District No. 4. The second is being made under Midhurst's FPC Gas Rate Schedule No. 19 at a presently effective rate of 13.8733¢ per Mcf in the Minoak Field, Bee County, Texas Railroad Commission District No. 2. Under its Rate Schedule No. 19, Midhurst has filed for an increased rate of 14.3733¢ which it proposed as the settlement rate. However, in its supplemental letter, Midhurst states that it will accept a settlement rate of 14.1¢ per Mcf under its Rate Schedule No. 19. The price levels set forth in the Statement of General Policy No. 61-1, as amended, for this area apply to sales of dehydrated natural gas with delivery at a central point in the field.[1] Texas Eastern in this area maintains a standard contract differential of 0.5¢ per Mcf for dehydration and central point delivery. The proposed 14.3733¢ rate for the sale of non-dehydrated gas delivered at the wellhead is equivalent to a 14.8733¢ rate when the standard contract differential of 0.5¢ is taken into account, and is therefore on a comparable basis in excess of the 14.6¢ ceiling under the Second Amendment. We shall therefore consider the Midhurst supplemental letter as a withdrawal of its notice of change in rate and shall approve a settlement rate under its Rate Schedule No. 19 of 14.1¢ per Mcf at 14.65 psia.

---

[1] The proceedings listed here are not consolidated.

Additionally, Midhurst proposes to eliminate the periodic price escalation, price redetermination and favored-nation provisions from its Rate Schedule No. 19 and to substitute therefor 0.5¢ per Mcf escalations in rate occurring on the fifth day of February 1968 and 1973.

In regard to its Rate Schedule No. 12, Midhurst proposes a settlement rate of 15.0¢ per Mcf for the remaining life of the contract which expires in 1978. Consequently, it proposes to eliminate the favored-nation and periodic price escalation provision from the subject rate schedule.

Under the settlement proposal, as supplemented, Midhurst's annual revenue will be decreased approximately $500 from the present revenue, and it will refund approximately $1,000, exclusive of interest, to TETC. For all of the reasons set forth in our order issued in Humble Oil & Refining Company, Docket No. G-9287, *et al.*, 32 FPC 49 (order issued July 8, 1964) we shall order Midhurst to retain the refund monies pending further order of the Commission. Comments to the offer of settlement were filed by TETC, The Brooklyn Union Gas Company and Long Island Lighting Company. We have considered them, and our action herein is consistent therewith.

We desire to make it clear that acceptance of Midhurst's offer of settlement shall not be construed as approval of any future increased rate filed in accordance with its reservation of the right to file increases to cover future tax increases or periodic increases as provided in its offer of settlement, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving Midhurst's rates and rate schedules.

The Commission finds:

The proposed settlement of the above-designated proceedings, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Midhurst on May 27, 1965, as supplemented, is consistent with the Statement of General Policy No. 61-1, as amended, 18 CFR 2.56, and approval thereof as made effective and hereinafter ordered is in the public interest and is appropriate to carry out the provisions of the Natural Gas Act.

---

[1] Hassie Hunt Trust, *et al.*, Docket No. RI64-58, *et al.*, order issued September 27, 1963, 30 FPC 856.

The Commission orders:

(A) The offer of settlement filed with the Commission by Midhurst May 27, 1965, as supplemented, is approved in accordance with the provisions of this order.

(B) The notice of change in rate to 14.3733¢ per Mcf filed by Midhurst on May 27, 1965, under its FPC Gas Rate Schedule No. 19 is considered withdrawn.

(C) Midhurst shall file, within 30 days of the issuance of this order, notices of change in rate providing for the settlement rates of 15.0¢ per Mcf under its Rate Schedule No. 12, and 14.1¢ per Mcf under its Rate Schedule No. 19.

(D) The contract amendment, designated as Supplement No. 6 to Midhurst's Rate Schedule No. 19, filed by it on May 27, 1965, is accepted for filing.

(E) Midhurst shall file within 30 days from the issuance of this order a contract amendment to its Rate Schedule No. 12 eliminating the favored-nation and periodic price escalation provisions therefrom.

(F) Midhurst shall compute the difference between the rates collected subject to refund and the settlement rate for sales to TETC in Docket Nos. RI62-414 and RI64-167, with applicable interest to the date of this order, and shall within 45 days from the date of issuance of this order submit a report to the Commission with a copy to TETC, setting out the amount of refunds (showing separately) the principal and applicable interest) the bases used for such determination, the period covered, and ten days thereafter a letter from TETC agreeing to the correctness of such amounts.

(G) Midhurst shall retain the amounts shown in the report required under paragraph (F) above, subject to further order of the Commission directing the disposition of those amounts.

(H) If Midhurst elects to commingle these retained refunds with its general assets and use them for its corporate purposes, it shall pay interest thereon at the rate of 6% per annum on all funds thus available from August 16, 1965 to the date on which they are paid over to the person ultimately determined to be entitled thereto in a final order of the Commission.

(I) If Midhurst elects to deposit the retained refunds in a special escrow account, Midhurst shall tender for filing on or before August 16, 1965, an executed Escrow Agreement, conditioned as set out below, accompanied by certificate showing service of a copy thereof upon TETC. Unless notified to the contrary by the Secretary within 30 days from the date of filing thereof, the Escrow Agreement shall be deemed to be satisfactory and to have been accepted for filing. The Escrow Agreement shall be entered into between Midhurst and any bank or trust company used as a depositor for funds of the United States Government and the agreement shall be conditioned as follows:

(1) Midhurst, the bank or trust company, and the successors and assigns of each, shall be held and formally bound unto the Federal Power Commission for the use and benefit of those entitled thereto, with respect to all amounts and the interest thereon deposited in a special escrow account, subject to such agreement, and such bank or trust company shall be bound to pay over to such person or persons as may be identified and designated by final order of the Commission and in such manner as may be therein specified, all or any portion of such deposits and the interest thereon.

(2) The bank or trust company may invest and reinvest such deposits in any short-term indebtedness of the United States or any agency thereof or in any form of obligation guaranteed by the United States which is, respectively, payable within 120 days as the said bank or trust company in the exercise of its sound discretion may select.

(3) Such bank or trust company shall be liable only for such interest as the invested funds described in Paragraph (2) above will earn and no other interest may be collected from it.

(4) Such bank or trust company shall be entitled to such compensation as is fair, reasonable and customary for its services as such, which compensation shall be paid out of the escrow account to such bank or trust company. Said bank or trust company shall likewise be entitled to reimbursement for its reasonable expenses necessarily incurred in the administration of this escrow account, which reimbursement shall be made out of the escrow account.

(5) Such bank or trust company shall report to the Secretary quarterly, certifying the amount deposited in the bank or trust company for the quarterly period.

(J) Upon notification by the Secretary of the Commission that Midhurst has complied with the terms and conditions of this order, the rate and charge of 15.0¢ per Mcf under its Rate Schedule No. 12, and the rate and charge of 14.1¢ per Mcf of natural gas under its Rate Schedule No. 19 at 14.65 psia, specified in its offer of settlement, as supplemented, shall be effective as of June 27, 1965, and the above-designated proceedings shall be deemed severed from the Texas Gulf Coast proceedings, Docket No. AR64-2; the proceedings in Docket Nos. RI62-414 and RI64-167 shall terminate, and Midhurst shall be relieved of its refund liability in Docket No. G-18150, all without further order of the Commission.

(K) The acceptance by Commission of Midhurst's offer of settlement, as supplemented, is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Midhurst, and is without prejudice to claims or contentions which may be made by Midhurst, the Commission staff, or any affected party hereto, in any proceeding, including area rate or similar proceedings.

OPINION NO. 456-A

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. RP61-8

OPINION AND ORDER ON REHEARING

(Issued June 23, 1965)*

Syllabus

1. Settlement order required Commission to determine whether Natural should normalize its taxes or flow-through tax effect of liberalized depreciation; determination was made in *Opinion No. 456* that pipeline was properly subject to flow-through—this also involved proper treatment of accumulated deferred taxes. P. 1279.
2. Deferred tax accumulations amount to contributions by pipeline's customers for taxes not actually paid. P. 1279.
3. Under Section 4(e) of the Gas Act Commission is empowered to make rate order effective back to date increased rate became effective subject to refund. P. 1279.
4. Since *Alabama-Tennessee* announced new policy, overruling previous decisions, it was not equitable to make rate order here effective before February 3, 1965 [date of new policy]. P. 1279.
5. It makes a great deal of difference whether all terms of settlement are in one package to be accepted or rejected, as in cited cases, or whether such

---

* Generally affirmed; remanded on one aspect, *City of Chicago* v. *F.P.C.*, —— F. 2d ——, (CADC-1967).

settlement leaves out an issue to be decided by Commission, as here. P. 1280.

6. Argument that pipeline has no duty to reduce rates to reflect flow-through for period beginning January 1, 1965, because it has nothing to flow-through [based on application to Internal Revenue Service to depart that date from liberalized depreciation for tax purposes] represents an attempt to reopen record to introduce new factor in rate case. P. 1280.
7. To give effect to a change in rates resulting from shift to straight-line depreciation, pipeline should make a rate filing in accordance with provisions of Gas Act and Commission Regulations. P. 1280.
8. Settlement agreement does not require that substantive determination here be made retroactive to March 1, 1961 [date increased rates became effective]; nothing in Section 4(e) of Gas Act or cited cases requires Commission to make its orders retroactive to date rate change became effective. P. 1281.
9. Upon rehearing, Commission *confirms* prior decision, with certain modifications.

Commissioner O'Connor *concurs in result.*

Commissioner Black *dissenting in part.*

Commissioner Bagge *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

SWIDLER, *Chairman:*

The City of Chicago on April 16, 1965, and Natural Gas Pipeline Company of America on April 19, 1965, have filed applications for rehearing of our Opinion No. 456 and order issued March 18, 1965, 33 FPC 574. The Public Service Commission of Wisconsin adopts Chicago's application. On May 12, 1965, we granted rehearing for the purpose of further consideration.

After the issue of the treatment of liberalized depreciation as permitted by Section 167 of the Internal Revenue Code had been reserved in a settlement, we determined in Opinion No. 456 that Natural was subject to the principles of *Alabama-Tennessee Natural Gas Co.*, 31 FPC 208, issued February 3, 1964, and must pass along to its customers the advantages of liberalized depreciation. Thus we found that Natural must no longer "normalize" its computation of allowable taxes by computing them on the basis of straight-line depreciation, but must "flow through" the advantages of the higher tax deductions to its customers by using the higher liberalized depreciation in computing the tax allowance. We also required that Natural reflect in its rates the deduction of accumulated deferred taxes from its rate base We ordered Natural to file new rate schedules to carry these changes into effect and make refunds from February 3, 1964, the date *Alabama-Tennessee* was issued.

Natural argues that we have inadvertently erred in ordering the rate base reduction because this issue was terminated by the settlement and was thus not reserved by the terms of the agreement. The City of Chicago agrees that it waived the deduction of the deferred taxes in computing the rate base. In making this statement the City of Chicago was arguing that we had departed from the settlement agreement in reaching our conclusion that refunds should be computed from February 3, 1964. In our opinion both parties are in error.

The settlement agreement, quoted at great length in Opinion No. 456 provides in part as follows:

> 2. The question of whether Natural, in computing its cost of service for rate purposes, should compute its federal income tax expense allowance by

> "normalizing" such taxes to eliminate the effect of Section 167 of the Federal Internal Revenue Code, which relates to "accelerated" or "liberalized" depreciation, or by utilizing the principle of "flow-through" of the tax effect of the use of such "accelerated depreciation" deductions for tax purposes, as proposed and defined by the City of Chicago in these proceedings, rather than the "normalization" method, shall be determined by an adjudication by the Commission in these proceedings and this issue shall not be terminated by approval of the settlement proposed hereunder.

We were thus required to determine whether Natural should normalize its taxes or flow-through the tax effect of liberalized depreciation. Accordingly, we determined that Natural was properly subject to flow-through. This also involved, in our opinion, the proper treatment of the accumulated deferred taxes. These have been accumulated by Natural in Account 282 and represent the difference between normalized taxes and the lower taxes actually paid as a result of the high deductions for liberalized depreciation. The deferred taxes so accumulated thus reflect the benefits of liberalized depreciation that had not been flowed through to Natural's customers. In fact these accumulations amount to contributions by Natural's customers for taxes not actually paid. There was thus properly before us the rate effects of both the tax computation and the treatment of the amounts in Account 282. Both of these matters were considered and determined in our Opinion No. 417 in *Alabama-Tennessee*, and therefore we prescribed the same solution here as of the date of *Alabama-Tennessee*.

Natural asserts that under the settlement agreement the deferred taxes were treated as a part of capital and a 1.5 percent rate of return allowed on them. Thus Natural argues that the rate base reduction would give cumulative effect to this facet of Commission policy. Natural here is attempting to look behind the figure for cost of service and the rates agreed to in the settlement. The parties however agreed only upon an overall annual cost of service of $137,014,823, based on the calendar year 1960 as adjusted, and made it clear that the "agreement thereto is not intended to reflect agreement to the amount, percentage or method of derivation of any particular item of such cost of service." (Tr. 2956) It was also provided that (Tr. 2967):

> It is expressly understood and agreed that this Stipulation and Agreement is made solely to effect a settlement of these proceedings. Therefore, although the settlement rates listed in Exhibit A are necessarily based on the cost of service agreed upon, this Stipulation and Agreement and attached Exhibit shall not be deemed, in any other proceeding, as approval, either by Natural, by any intervenor or by any other party, or any method or principle employed in developing such cost of service or the rates resulting therefrom, or of any specific data used in the computation thereof.

Natural argues that, contrary to *Alabama-Tennessee*, we have made a retroactive application of its principles. Of course, under Section 4(e) of the Natural Gas Act we are empowered to make our rate order effective back to the date Natural's increased rates became effective subject to refund. We might have done so here except that in *Alabama-Tennessee* we were announcing a new policy and overruling previous decisions. It was therefore not equitable, contrary to the contentions of Chicago, to make our determination effective before February 3, 1964, but on that date the industry was informed of the new policy, and it was appropriate that refunds should be ordered from then.

Natural contends that in reaching this result we have discriminated against it because in other cases we have permitted later dates, but the cases it cites (with one exception), including those referred to in Opinion No. 456, are settlements. Contrary to Natural's argument we think it makes a great deal of difference whether all the terms of a settlement are in one package to be accepted or rejected as in those cases or whether the settlement leaves out an issue to be decided by us as in this proceeding. The one exception cited is *Midwestern Gas Transmission Company*, 32 FPC 993, Opinion No. 444, Docket Nos. RP61-19 and RP62-7, issued October 13, 1964, but this was a Section 5(a) proceeding where, of course, we were required to make all rate reductions prospective only.

Natural also points out that on March 29, 1965, after the issuance of Opinion No. 456, it filed an application with the Internal Revenue Service to change, as of January 1, 1965, from the use of liberalized depreciation to the straight-line method for Federal income tax purposes. Therefore, it says, it has no duty to reduce its rates to reflect flow-through for the period beginning January 1, 1965, because it has nothing to flow through for that period. Natural's argument represents an attempt to reopen the record to introduce a new factor in a rate case, which already has been decided by the Commission. The cost of service based on the test year 1960 was stipulated subject to certain reserved issues including the question of liberalized depreciation for tax purposes. Specifically, the cost of service was stipulated to be $137,014,823; and the settlement agreement reserved the question whether under Section 167 of the Internal Revenue Code the principle of "flow-through" or "normalization" should be used. The record showed and the stipulation assumed that Natural was making use of liberalized depreciation for income tax purposes. For the company now to state that it proposes to abandon use of liberalized depreciation introduces a new fact and a new issue. To bring the record up to date with respect to this one element would destroy the basis of the settlement and would lead to a one-sided result. Where the record is opened to consider one changed element it should be opened for other elements which may have changed in the meantime. *Cf., City of Detroit* v. *F.P.C.*, 230 F. 2d 810 (CADC), certiorari denied, 352 U.S. 829.

In order for Natural to give effect to a change in rates resulting from a shift to straight-line depreciation, Natural should make a rate filing in accordance with the provisions of the Act and our regulations. We are not contesting Natural's right to make this change for tax purposes, and we do not propose to suspend such a rate increase for more than one day. In this way a new proceeding will be started, in which other elements in Natural's cost of service can, if appropriate, be put in issue and in which Natural will appropriately have the burden of proof under Section 4(e) to show that its increased rates are just and reasonable, including its use of straight-line depreciation in computing its tax allowance for rate purposes. In the present proceeding we shall require that Natural file new rates thirty days after *Alabama-Tennessee* becomes final based on liberalized depreciation, deduction of the deferred taxes from the rate base and flow-through. These rates shall be effective from February 3, 1964, until superseded by other rates, presumably the straight-line rates, filed by Natural. We shall require Natural to make refunds reflecting flow-through and the rate base deduction also from February 3, 1964, until the new straight-line rates become effective. In the new proceeding we can require further refunds if it should be determined that Natural is unjustified in employing straight-line tax depreciation for rate-making purposes.

Chicago argues again that the settlement agreement prevents us from prescribing an effective date for the rate reduction other than March 1, 1961, the date the increased rates became effective. As explained in Opinion No. 456, we are of the opinion that the settlement agreement does not require that our substantive determination here *must* be made retroactive to March 1, 1961. Furthermore, there is nothing in Section 4(e) of the Natural Gas Act or the cases cited by Chicago that require us to make our orders retroactive to the date the rate change became effective. Section 4(e) on this matter, provides only that the Commission may "order such natural-gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified." *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332, 341, recognizes our power under Section 4(e) to make our order retroactive to the date the rate change became effective, but it does not require that we do so.

Chicago is correct, however, that our ordering clause (B) is ambiguous and in error, and we accordingly amend it below to clarify it, as well as changing the rate filing and refund provisions to take into account Natural's proposal to abandon liberalized depreciation.

The Commission further finds:

The assignments of error and grounds for rehearing set forth in the applications for rehearing filed in this proceeding present no new facts or legal principles which would warrant any change or modification in the Commission's Opinion No. 456 and order except as specified below.

The Commission orders:

(A) Our Opinion No. 456 and order issued March 18, 1965, is hereby confirmed as the decision of the Commission and requests for modification thereof are hereby denied except as provided herein.

(B) For the purpose of reflecting the matters discussed above, particularly Natural's proposal to abandon the use of liberalized depreciation for tax purposes as of January 1, 1965, the ordering clauses of our order of March 18, 1965, are hereby deleted and the following ordering clauses substituted as of the date of issuance of this order.

(C) Within 30 days of the date that the decision in *Alabama-Tennessee*, Opinion No. 417, becomes final, Natural shall file new rate schedules, effective February 3, 1964, reflecting the lower Federal income tax allowance and the lower rate base referred to above conforming to the stipulation of June 21, 1962, and satisfactory to the Commission. These rates shall remain effective until the date superseding rates filed by Natural become effective.

(D) Within 30 days of the date of issuance of the Commission's order approving the rate filing or filings required by paragraph (C), Natural shall refund to its jurisdictional customers for the period from February 3, 1964, to the date superseding rates become effective, or if there are no superseding rates to the date of refund, the difference between the amounts collected and those which would have been collected for such period under the rate schedules required to be filed by paragraph (C), together with interest at the rate of 7 percent per annum from the date of payment to Natural to the date of refund.

(E) Within 30 days of making the refunds required by paragraph (D), Natural shall report to the Commission in writing and under oath the details of its calculations resulting in the refunds together with copies of releases from each of its jurisdictional customers.

Commissioner O'Connor *concurs in the results only.*

Commissioner Black *dissenting in part.*

Commissioner Bagge *not participating.*

BLACK, *Commissioner, dissenting in part:*

The matters raised on rehearing strengthen my opinion that the majority is in error on both legal and policy grounds in not requiring Natural to refund the excess revenues collected by reason of its normalized treatment of liberalized depreciation for the entire period the inflated rate has been in effect; that is from March 1, 1961, to the present. I agree, however, with the majority that *Alabama-Tennessee* did not restrict us to a prospective application of its principles. Similarly, I agree that, regardless of the unexpressed intentions of the parties, both Natural and the City of Chicago are in error in concluding that, under their settlement agreement, they had waived the deduction of the deferred taxes in computing the rate base.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

PACIFIC POWER & LIGHT COMPANY, PROJECT NO. 2082

ORDER CLARIFYING LICENSE AND DENYING MOTION TO EXTEND TIME FOR CONSTRUCTION OF FISH HATCHERY

(Issued June 23, 1965)*

On April 28, 1965, the Pacific Power & Light Company (Pacific) filed a motion to extend the period for construction of a fish hatchery at its Iron Gate Development, Project No. 2082, on the Klamath River in California.

Article 50 of the license for this project requires Pacific to pay the State of California 80 percent of the cost of operating and maintaining the fish hatchery (29 FPC 478, 486). An appeal was taken from the order issuing this license to the United States Court of Appeals for the Ninth Circuit. The Court in *Pacific Power & Light Company* v. *F.P.C.*, 333 F. 2d 689, 697 (1964), said:

> We * * * think * * * that Article 50 of the license is unclear in one respect. Rather than requiring Pacific to pay the full cost of operating and maintaining the hatchery at 80 percent of capacity, it requires that it pay 80 percent of the annual cost of operation and maintenance. Thus, if the Department [of Fish and Game of the State of California (Department)] chose to reject the benefit of full capacity operation (a benefit that the Commission does not claim that it can order the Department to accept) and operates at 80 percent, Pacific would pay only 80 percent of 80 percent. This appears to be inconsistent with the views expressed by the Commission itself. We presume that the Commission intends that, so long as the Department operates the hatchery at at least 80 percent of capacity, Pacific should pay for the cost of operating at 80 percent of capacity, but that in no event should Pacific be required to pay more than actual operating costs.
>
> * * * * * * *
>
> The matter is remanded to the Commission * * * for such clarification of Article 50 as it may desire to make.

Although the capacity of the hatchery is specified in Article 49 of the license (30 FPC 499, 503), Pacific contends that until the Department gives assurance that it will accept twenty percent (20%) of the cost of operation, the hatchery's

---

*Rehearing denied by order issued August 20, 1965, 34 FPC 552. Affirmed, *California Department of Fish and Game* v. *F.P.C.*, 359 F. 2d 165 (CA9–1966), cert. denied 385 U.S. 932 (1966).

capacity, and hence its design specifications, cannot be finally determined. Pacific requests that construction be postponed until this supposed uncertainty concerning the hatchery's capacity is settled.

On May 6, 1965, the Department filed opposition to Pacific's motion. The Department opposes delay of the construction on three grounds. First, it would be detrimental to anadromous fish runs in the Klamath River. Second, since the issue before the Commission relates only to reimbursement for the costs of maintenance and operation, there is no uncertainty as to the size and design of the fish hatchery, which have been stipulated to by Pacific. Third, the State of California will operate the fish hatchery at full capacity whenever the runs of anadromous fish provide the eggs for full capacity operation.

Pacific's motion to extend time for construction of the fish hatchery brings before us the question on remand to the Commission from the Ninth Circuit Court of Appeals as to the meaning of Article 50. We intend by Article 50 of the license that Pacific shall reimburse the State of California for 80 percent of the cost of actual operation and maintenance whether at full capacity or a lesser capacity. This clarification of the Article, and the Department of Fish and Game's statement of its intent to make full use of the fish hatchery, removes any reason that might have existed to review the hatchery's size and capacity. Thus, there is no need to delay construction. We therefore deny Pacific's motion.

The Commission finds:

It is appropriate and in the public interest in administering Part I of the Federal Power Act (16 U.S.C. 791-823) that Pacific Power & Light Company's motion, filed on April 28, 1965, to extend the time for construction of a fish hatchery at its Iron Gate development be denied.

The Commission orders:

The motion filed on April 28, 1965, by Pacific Power & Light Company to extend the time for construction of a fish hatchery at the Iron Gate development of Project No. 2082, hereby is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

CITY OF PETERSBURG, ALASKA, PROJECT NO. 2432

ORDER ACCEPTING SURRENDER OF PRELIMINARY PERMIT

(Issued June 23, 1965)

Application was filed on April 15, 1965 by the City of Petersburg, Alaska, for surrender of its preliminary permit for proposed Kupreanof Hydroelectric Project No. 2432, to have been located on Towers and Hamilton Creeks within the Tongass National Forest near the Town of Petersburg, Alaska.

The preliminary permit was issued to the permittee by the Commission on June 19, 1964, 31 FPC 1569, for a period of 24 months.

In its application for surrender, the permittee concluded that the project could not be justified since studies made under the permit proved that the permittee's original information, pertaining to rainfall and other precipitation upon which the application for permit was predicated, was invalid, thus rendering the proposed project inadequate to meet the permittee's future needs.

The Commission finds:

Acceptance of surrender of the preliminary permit for proposed Project No. 2432 is appropriate.

The Commission orders:

Surrender of the preliminary permit for proposed Project No. 2432 is hereby accepted, effective as of April 15, 1965, the date upon which the application for surrender was filed.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

UNITED STATES DEPARTMENT OF THE INTERIOR, SOUTHEASTERN POWER ADMINISTRATION, DOCKET NO. E-7002

ORDER CONFIRMING AND APPROVING RATES AND CHARGES

(Issued June 23, 1965)

The Secretary of the Interior, on behalf of the Southeastern Power Administration (SEPA) on February 9, 1965, filed with the Federal Power Commission, pursuant to the provisions of the Flood Control Act of 1944 (58 Stat. 887), a request for a five-year extension of the Commission's current confirmation and approval of the long-term wholesale power rates and charges applicable to power sold from the John H. Kerr and Philpott projects. Approval is requested for the period beginning July 1, 1965 and ending June 30, 1970.

The John H. Kerr project, having a generating capacity of 204,000 kw, is located on the Roanoke River, 20 miles downstream from Clarksville, Virginia and 18 miles upstream from the Virginia-North Carolina state line, and is operated by the Corps of Engineers. The Philpott project, having a generating capacity of 14,000 kw, is located on the Smith River, about 20 miles upstream from Martinsville, Virginia, and is also operated by the Corps of Engineers. The Smith River is a tributary of the Dan River, which flows into the Roanoke River above the Kerr project.

Under the current marketing arrangements two-thirds of the power output of the John H. Kerr project and all of the power output of the Philpott project are marketed through the facilities of Virginia Electric & Power Company (VEPCO). The remaining one-third of the output of the John H. Kerr project is marketed through the facilities of Carolina Power & Light Company (CP&L). Since the Philpott project is not directly connected to the transmission facilities of VEPCO, the Philpott power is delivered to Appalachian Power Company which delivers it to VEPCO pursuant to a contractual agreement between the two companies.

The rate schedules and rates and charges for which extension of the Commission's approval is requested are identical to those previously approved[1] and cover the sale of the total commercial power output of the John H. Kerr and Philpott projects to VEPCO, CP&L and to 32 cooperatives and one municipality. The current Commission approval for all of these rate schedules and contractual rates and charges expires June 30, 1965. The rates and charges are contained in the following three rate schedules and two contracts:

---

[1] The current rates and charges were approved by Commission orders in this docket issued December 21, 1961, 26 FPC 913, April 20, 1962, 27 FPC 823 and January 31, 1964 (letter-order unreported).

1. *Wholesale Firm Power Rate Schedule KP–1*, applicable to the sale of power generated at both the John H. Kerr and Philpott projects to preference customers within the service area of Virginia Electric & Power Company.

2. *Wholesale Dump Energy Rate Schedule KP–2* (*Revised*), applicable to the sale of dump energy from the John H. Kerr and Philpott projects to Virginia Electric & Power Company and Carolina Power & Light Company.

3. *Wholesale Firm Power Rate Schedule JHK–1*, applicable to the sale of power generated at the John H. Kerr project to preference customers within the service area of Carolina Power & Light Company.

4. *The SEPA–VEPCO Contract dated March 24, 1961*, under which VEPCO purchases capacity and energy generated at the John H. Kerr and Philpott projects and contains various subsections specifying rates and charges therefor.

5. *The SEPA–CP&L Contract dated December 7, 1955, as amended by Supplemental Agreement No. 4, dated August 23, 1963*, under which CP&L purchases capacity and energy from the John H. Kerr Project and contains various subsections specifying rates and charges therefor.

A repayment study for the John H. Kerr and Philpott projects commencing with fiscal year 1955, the first year in which all the generating units at the projects were in operation, was prepared by SEPA and filed with the Commission in support of the rate schedules and rates and charges described above. This study shows, among other things, that the anticipated revenues from the proposed rates and charges will be sufficient to pay all production and marketing costs, including interest charges on the investment allocated to power, amortization of the initial power investment within 50 years of commencement of full commercial operation of the projects, and amortization of capital replacement costs over the service lives of the facilities replaced.

Notice of the proposed rates and charges was sent to interested State officials and published in the Federal Register on February 20, 1965 (30 F.R. 2377), stating that any person desiring to make comments or suggestions for the Commission's consideration with respect thereto should submit them on or before March 26, 1965. No comments or suggestions have been received.

The Commission finds:

It is appropriate for the purposes of the Flood Control Act of 1944 that the proposed rates and charges for the sale of power from the John H. Kerr and Philpott projects consisting of: (1) Wholesale Firm Rate Schedule KP–1; (2) Wholesale Dump Energy Rate Schedule KP–2 (Revised); (3) Wholesale Firm Power Rate Schedule JHK–1; (4) the rates, charges and service conditions set forth in the contract dated March 24, 1961 for the sale of power to VEPCO; and (5) the rates, charges and service conditions set forth in the contract dated December 7, 1955, as amended by Supplemental Agreement No. 4 dated August 23, 1963, for the sale of power to CP&L, be confirmed and approved for the period beginning July 1, 1965, and ending June 30, 1970.

The Commission orders:

The rates and charges of the Southeastern Power Administration for the sale of power developed at the John H. Kerr and Philpott projects, consisting of the Rate Schedules described in the above finding and the rates and charges set forth in the contracts described therein, all as referred to above, are hereby confirmed and approved for the period beginning July 1, 1965, and ending June 30, 1970.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

VIRGINIA ELECTRIC & POWER COMPANY, PROJECT NO. 2462

ORDER TERMINATING LICENSE ORDER ON REHEARING

(Issued June 23, 1965)

On May 24, 1965, Virginia Electric & Power Company (Applicant) filed an application for rehearing of the Commission's order issued April 27, 1965, 33 FPC 895, with respect to applicant's Belle Isle Project on the James River in Richmond, Virginia, Project No. 2462. The applicant requests that the Commission abrogate the license order issued for this project.

Applicant states that its current economic analysis of the project shows that continued operation of the project is no longer economically feasible, that it will be operated at a loss and is not justified. It represents that the project is to be forthwith retired from service.

The Commission finds:

It is appropriate and in the public interest to terminate and vacate the license order in Project No. 2462, as hereinafter provided.

The Commission orders:

(A) The Commission's order of April 27, 1965 issuing license to the Virginia Electric & Power Company for Project No. 2462 is hereby vacated on rehearing.

(B) Applicant shall cease power operations within thirty (30) days from the date of issuance of this order.

(C) The project works of Project No. 2462 shall be removed within one (1) year from the date of issuance of this order to the extent necessary to restore the navigable waters to a condition satisfactory to the Chief of Engineers, Department of the Army.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

ANNUAL REPORT FORM PRESCRIBED FOR NATURAL GAS COMPANIES—MAIN LINE DIRECT INDUSTRIAL SALES, DOCKET NO. R-243

ORDER NO. 300

AMENDING § 155.1 OF REGULATIONS UNDER THE NATURAL GAS ACT AND ANNUAL REPORT F.P.C. FORM NO. 2

(Issued June 24, 1965)*

This proceeding was initiated by a notice of proposed rulemaking issued July 15, 1963, published in the Federal Register (28 F.R. 7434, July 20, 1963) and mailed to all natural gas companies and other parties, including federal and state agencies, who might be interested in the proposals.

Section 155.1 of the Commission's Regulations Under the Natural Gas Act (18 CFR 155.1) now requires the pipeline companies to furnish currently to the Commission copies of every contract, involving sales of 100,000 Mcf per year or more, in effect for the direct sale of natural gas together with copies of all other writings relative to each such sale. However, no data are available at present on the gas curtailment policies, practices and methods used by the pipeline companies. The notice proposed to require additional information with respect to such sales which the Commission deems essential in order to be advised whether the service being rendered to direct industrial customers conforms to the certificate authorization; whether direct interruptible customers are such only in contract terms; and whether the pipeline's actual operations require modification of the allocation of costs to jurisdictional customers. The new schedule which was proposed in the notice to be added to FPC Report Form No. 2 is intended to supplement information already required by the form. The regulations will supply the Commission with much more complete and meaningful information concerning the direct industrial sales made by natural gas pipeline companies, for use in carrying out its statutory functions.

---

*Published in the Federal Register on June 30, 1965 (30 F.R. 8331).

Following publication of the notice, comments were received from the Independent Natural Gas Association of America, 10 pipeline companies, 1 state commission and a group of distribution companies. Some opposed the proposed regulation for a variety of reasons; others favored the regulation but suggested certain modifications. By this order we are adopting most of the suggestions proposed. The two principal objections to the regulation were (1) the proposals are beyond the authority of the Commission since it has no jurisdiction over the rates at which direct industrial sales are made, and (2) the publication of detailed rate and curtailment data would give other fuel interests an unfair competitive advantage.

The jurisdictional argument is without merit because the Commission's power to prescribe accounting and reporting is not limited to the regulated portion of the overall business activities engaged in by a natural gas company subject to its jurisdiction. It has long been established that the Commission's discretionary power to require periodic reports encompasses the reporting of such non-regulated activities to the extent that they are relevant to the performance of the Commission's regulatory activities. The imposition of a reporting requirement concerning the nonjurisdictional business of a regulated company does not constitute the regulation of that business. Rather, it is action necessary to enable the Commission to properly regulate matters which fall directly within the ambit of its jurisdiction (*Interstate Commerce Commission* v. *Goodrich Transit Company*, 224 U.S. 194 (1911); *Norfolk and Western Railway Company* v. *U.S.*, 287 U.S. 134 (1932)).

The Commission has no rate jurisdiction over direct industrial sales but it does have certificate jurisdiction pursuant to section 7 of the Act to determine whether the transportation and delivery of natural gas to such customers, and the facilities, if any, meet the standards of public convenience and necessity. In order to exercise this jurisdiction intelligently as well as to make proper allocation between jurisdictional and nonjurisdictional operations of a pipeline in fixing the rates for the jurisdictional sales, we believe we must secure reasonable information as to the nature of the pipeline's direct industrial sales.

The comments also urged that the public availability of curtailment data would afford an undue competitive advantage to suppliers of alternative fuels. While the Commission has the responsibility for obtaining meaningful information to discharge its statutory functions and in appropriate proceedings must make such data available to all interested parties (*cf. Federal Communications Commission* v. *Schreiber*, 381 U.S. 279, 33 L.W. 4492, May 24, 1965), we are not obligated in the absence of a proceeding in which the material is relevant to make such business information available to competitors or other parties only indirectly affected by the curtailment practices of the reporting company. Accordingly, we are providing that the new schedule entitled "Curtailments of Main Line Industrial Customers" proposed in paragraph 5(D) of the notice herein, but revised as described below, shall be filed separately from, but concurrently with, Form No. 2 to which it is supplementary. Further, we provide that it, unlike the form itself, will not be open to public inspection but will be available for inspection pursuant to our existing rules relating to the availability to the public of information in the Commission's files (*see* 18 CFR 1.36(e) and the new subparagraph (7) being added by this order to paragraph (d) of § 1.36), or by incorporation in the record of any proceeding pending before the Commission or the courts when such action is determined by the Commission to be in the public interest.

We are making several substantial changes in the amendments proposed in the notice—in connection with the new schedule; with respect to the amendments proposed to be made by paragraph 5(C) of the notice to the existing schedule "Main Line Industrial Sales of Natural Gas" on page 519 of the Form; and to the text of § 155.1. These changes arise out of some of the comments received.

With respect to the new schedule, we are revising the form of the schedule to show both the average daily delivery to direct industrial customers during the system peak period (col. (d)), and the maximum daily delivery during the year (cols. (e) and (f)). This change will make available data from which it will be possible to determine the extent that pipeline capacity is being utilized by jurisdictional interruptible customers and direct industrial customers, and will indicate the extent of the curtailment in relation to the average day and maximum day takes of the particular customer.

Suggestion was made that the rate adjustment information, which under paragraph (d) of the proposed amendment to § 155.1 would be furnished as a special report by May 1 of each year, could be furnished just as well, and in fact preferably, as a part of the existing schedule on page 519 "Main Line Industrial Sales of Natural Gas." This change would eliminate the filing of a special report and would still give the Commission the information it needs. Therefore, in lieu of the proposed § 155.1(d) and the specific amendments to that schedule proposed in paragraph 5(C) of the notice, we are prescribing a revised schedule which makes provision for the inclusion of the information which under the original proposal, would have been included in a special report.

In addition to the deletion of paragraph (d) of the proposed amendments to § 155.1, two other changes are being made in that section, *viz*, the reporting date of the list required by paragraph (c) is changed from November 1 of each year to May 1, and in paragraphs (a) and (c) the figure 100,000 Mcf is changed to 50,000 Mcf, thereby requiring the filing and information with respect to contracts involving transactions between those figures. We are informed that the industry generally keeps records for its own purposes on the basis of the lower figure and, therefore, would have no objection to reporting to us on the same basis. It might be noted that instruction 3 of the existing schedule for reporting "Main Line Industrial Sales" on page 519 provides for the reporting separately of sales of $10,000 or more per year. That figure has been changed to 50,000 Mcf in the revised form prescribed herein.

Finally, in view of our conclusion that the new supplemental schedule for reporting curtailments should not be made available for general public inspection, we are amending § 1.36 of the Rules of Practice and Procedure, relating to public information, by adding to paragraph (d) *Exceptions* a new subparagraph (7) to exempt, in effect, this schedule from public inspection.

The Commission finds:

(1) The amendments herein adopted are necessary and appropriate for the administration of the Natural Gas Act.

The Commission, acting pursuant to the provisions of the Natural Gas Act, as amended, particularly sections 10 and 16 thereof (52 Stat. 826, 830; 15 U.S.C. 717i, 717o), *orders:*

(A) Part 1, Subchapter A, Part 155, Subchapter E, and Part 260, Subchapter G, Chapter I, Title 18 of the Code of Federal Regulations, are amended as follows:

(1) Paragraph (d) of § 1.36 is amended by deleting subparagraph (7) which is now obsolete and inserting in lieu thereof the following:

"§ 1.36 Public information.

* * * * * * *

(d) *Exceptions.* * * *

(7) The schedule entitled "Curtailments of Main Line Industrial Customers" prescribed as a supplement to F.P.C. Form No. 2 by § 260.1 of this chapter."

(2) The existing text of § 155.1 is amended, designated as paragraph (a), and new paragraphs (b) and (c) are added, as follows:

"§ 155.1 Contracts and rate schedules for direct industrial sales.

(a) Every natural gas company shall furnish to the Commission two full and complete copies of every contract and every amendment thereto, presently or hereafter effective, for the direct sale of natural gas to industrial consumers for consumption where such contract involves the sale of 50,000 Mcf or more per year, together with all rate schedules, agreements, leases, writings or other understandings, services and rules and regulations relative to such sale. Such submittals shall include the docket number(s) of the certificate proceeding(s) in which the transportation and delivery were authorized for the particular sale and shall be made within 60 days after issuance of the certificate, or execution of the contract or amendment thereto, whichever occurs later. When any contract now on file or hereafter furnished is renewed or extended on identical terms except as to the period during which it is to be in effect, the natural gas company may, in lieu of furnishing copies of such renewal or extension agreement, within 60 days, notify the Commission of such renewal or extension by letter, in duplicate, stating the date of the renewal or extension agreement and the period during which it is to be in effect.

(b) On or before September 1, 1965, every natural gas company shall furnish to the Commission a list, in duplicate, of every contract theretofore tendered to the Commission pursuant to this Part 155, which is effective as of the date of submittal of the list. Such list shall include the docket number(s) of the certificate proceeding(s) in which the transportation and delivery were authorized for the particular sale, the name of the buyer thereunder and date of the contract. When any of the listed contracts, or any contract subsequently tendered to the Commission pursuant to this Part 155, is cancelled or terminated by its own terms (whether superseded by a new contract or not), the natural gas company shall so advise the Commission within 60 days of such cancellation or termination by letter, in duplicate, identifying the contract being cancelled or terminated and the date of such cancellation or termination.

(c) Every natural gas company shall furnish to the Commission, in duplicate, by May 1 of each year, a list of all direct industrial sale customers using 3,000 Mcf or more during any of the 12 months ended with the preceding calendar year, but less than 50,000 Mcf during the 12 months ended with the preceding calendar year, showing the docket number(s) of the proceeding(s) authorizing the transportation of natural gas and facilities, if any, necessary for each particular sale, name and location of purchaser, type of service such as firm or interruptible, and the maximum monthly use during the 12 months ended with the preceding calendar year."

(3) Paragraph (c) of § 260.1 is amended by inserting, to follow schedule title "Main Line Industrial Sales of Natural Gas," a new title to read "Curtailments of Main Line Industrial Customers (submitted separately)."

(B) The annual report for natural gas companies, F.P.C. Form No. 2, prescribed by paragraph (a) of § 260.1, is amended as follows:

(1) Effective for the reporting year 1965, the schedule "Main Line Industrial Sales of Natural Gas," set out in *Attachment A** hereto, is prescribed for use in lieu of the similarly titled schedule appearing on pages 519–520 of such form.

(C) Effective for the reporting year 1965, a new schedule "Curtailment of Main Line Industrial Customers," as set out in *Attachment B* hereto,* is prescribed as a supplement to F.P.C. Form No. 2. The schedule shall be filed concurrently with Form No. 2 but shall not be included as an integral part thereof and shall not be available for inspection in public files of the Commission except pursuant to § 1.36(e) of this chapter. The Commission may, also, when it finds such action to be in the public interest, authorize such schedules to be made public and incorporated in the record of any proceeding before the Commission or the courts.

* * * * * * *

[Secs. 10, 16, 52 Stat. 826, 830; 15 U.S.C. 717i, 717o.]

(D) The amendments herein made to Parts 1, 155 and 260 and to F.P.C. Form No. 2 shall be effective August 1, 1965.

(E) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

COLUMBIA RIVER BASIN, HEADWATER BENEFITS INVESTIGATION, DOCKET NO. E–6384

ORDER GRANTING APPLICATION FOR STAY

(Issued June 25, 1965)

This order stays, upon stated conditions, the order of April 30, 1965, 33 FPC 907, determining payments to the United States under subsection 10(f) of the Federal Power Act (16 U.S.C. 803(f)) for benefits provided by its headwater improvements to certain non-Federal projects in the Columbia River basin between January 1, 1957, and August 31, 1961, and directing that the non-Federal parties file a settlement agreement under Section 13.1 of the Regulations under Federal Power Act for benefits provided among themselves for this period. The payments, according to the order, were to be made within sixty days of its issuance, and the filing of a settlement agreement, within ninety days. The Secretary of the Interior on May 28, 1965, filed an application for rehearing and a request for hearing. The Commission on June 22, 1965, granted the Secretary's application and specified that the time for the hearing would be fixed by the Secretary of the Commission. On June 15, 1965, The Montana Power Company, The Washington Water Power Co., PUD No. 1 of Pend Oreille County, PUD No. 1 of Chelan County, and PUD No. 2 of Grant County, which are the non-Federal parties required to make payments to the United States by the order of April 30, 1965, filed application to stay the order of April 30, 1965, until the Commission issues its final order. The Secretary of the Interior on June 24, 1965, filed a response in opposition to this application for stay.

---

*Omitted in printing.

We believe that the stay should be granted, provided the non-Federal parties pay interest of 6% per annum on any amounts to be paid to the United States from the date on which payment was due under the order of April 30, 1965. Any non-Federal party not acknowledging acceptance of this order shall be subject to penalties as provided in subsection 17(b) of the Federal Power Act (16 U.S.C. 810(b)) and subparagraph 11.31(e) of the Regulations under the Federal Power Act.

The Commission finds:

It is appropriate and in the public interest in administering Part I of the Federal Power Act (16 U.S.C. 791–823), that the order of April 30, 1965, be stayed on the conditions hereinafter provided.

The Commission orders:

(A) The order of April 30, 1965, hereby is stayed until the Commission has issued a final order: Provided, however that interest at a rate of 6% per annum shall be paid from June 29, 1965, until the date of payment of whatever amount ultimately may be required to be paid.

(B) This order is subject to acknowledgment of its acceptance by the above named non-Federal parties within 60 days from its date of issuance.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

IRA BOYD HUMPHREYS AND ALBERT E. HUMPHREYS, PROJECT NO. 375

ORDER PERMITTING WITHDRAWAL OF APPLICATION FOR NEW LICENSE

(Issued June 25, 1965)

By letter dated April 6, 1965, Ira Boyd Humphreys and Albert E. Humphreys (Applicants) of Denver, Colorado, requested Commission permission to withdraw their application for a new license for minor Project No. 375 filed on August 3, 1964. The last license for the project, which was issued without charge, expired on May 13, 1958.

Applicants advise that the Forest Service has informed them that due to the small size of the project (50 horsepower), a Forest Service Special Use Permit should be obtained for the continued operation of the project affecting National Forest lands rather than another license from the Commission. This is in accord with a 1952 procedural understanding between the Forest Service and the Commission under which the Service would thenceforth issue Special Use Permits for such minor projects.

The Commission orders:

Permission to withdraw the aforesaid application for new license for minor Project No. 375 is hereby granted, effective as of May 13, 1958, and the proceeding on Project No. 375 is hereby closed.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

CITIES SERVICE GAS COMPANY, ET AL., DOCKET NO. RP64-9, ET AL.

ORDER APPROVING RATE SETTLEMENT AGREEMENT, PRESCRIBING REFUNDS, TERMINATING PROCEEDING IN PART, ACCEPTING REVISED TARIFF SHEETS FOR FILING, AND PERMITTING THE REVISED TARIFF SHEETS TO BECOME EFFECTIVE

(Issued June 28, 1965)

Cities Service Gas Company (Cities Service), pursuant to the provisions of Section 4 of the Natural Gas Act, on October 21, 1963, tendered for filing revised tariff sheets[1] proposing an annual increase in its rates and charges of $5,296,571 over the rates in effect for the year ended June 30, 1963, as adjusted. By order issued November 22, 1963 in the subject proceedings, the proposed increased rates and charges were suspended until April 23, 1964.

Cities Service, on March 16, 1964, tendered for filing substitute tariff sheets[2] superseding certain of the aforementioned suspended tariff sheets. These substitute tariff sheets reflected the reduction in the Federal income tax rate from 52 percent to 50 percent, and, consequently, reduced the aforementioned pro posed increase in rates and charges from $5,296,571 to $4,786,142. The suspended tariff sheets were permitted to become effective as of April 23, 1964, subject to refund with interest.

During the hearings, Cities Service proposed a recess of the hearings for the purpose of discussing settlement of the proceedings. Upon the concurrence of all parties, the hearings were recessed, and conferences commenced on April 20, 1965, and extended to May 5, 1965. Final agreement was reached by all parties to these proceedings and is contained in the "Stipulation and Agreement", which is attached hereto as Exhibit "A"* and is made a part hereof. The "Stipulation and Agreement" was placed in the record as Exhibit No. 96, on May 19, 1965.

The Presiding Examiner, on May 20, 1965, certified the "Stipulation and Agreement" to the Commission, together with a portion of the transcript of the hearing held on May 19, 1965. The "Stipulation and Agreement" was concurred in by all of the parties participating in the settlement conferences, and no objections thereto have been filed.

The principal provisions of the "Stipulation and Agreement" are summarized, in part, as follows:

(1) The rates and charges from and after April 23, 1964 will be based upon a jurisdictional cost of service of $67,000,000.

(2) Cities Service will make immediate refunds of the amounts collected above the settlement rates, with interest, for the period from April 23, 1964, through April 22, 1965. In addition, the difference between the settlement rates and the

---

[1] Eighth Revised Sheets Nos. 4, 5, 7, 8, 10 and 19; Ninth Revised Sheet No. 12; Tenth Revised Sheet No. 14; Eleventh Revised Sheet No. 16; Third Revised Sheets Nos. 43, 44, 45 and 46; Second Revised Sheet No. 47 and Original Sheet No. 48, all to Cities Service's FPC Gas Tariff, Second Revised Volume No. 1; and Eighth Revised Sheet No. 27 to Cities Service's FPC Gas Tariff, Original Volume No. 2.

[2] Substitute Eighth Revised Sheets Nos. 4, 5, 7, 8, 10 and 19; Substitute Ninth Revised Sheet No. 12; Substitute Tenth Revised Sheet No. 14 and Substitute Eleventh Revised Sheet No. 16 to its FPC Gas Tariff, Second Revised Volume No. 1; and Substitute Eighth Revised Sheet No. 27 to its FPC Gas Tariff, Original Volume No. 2.

*Omitted in printing.

rates billed and collected subsequent to April 22, 1965, will be refunded to the jurisdictional customers through credits in subsequent billing periods.

(3) Additional refunds will be made for the period from April 23, 1965, through December 22, 1965, if Cities Service's actual weighted average cost of purchased gas, based on a post audit for that period, is below 13.57 cents per Mcf—the weighted average cost of purchased gas reflected in this settlement agreement.

(4) Another post-audit computation of Cities Service's actual weighted average cost of purchased gas will be made covering the period from December 23, 1965, until the rates provided by Articles II and VII of the Agreement are superseded. In the event that Cities Service's purchased gas costs for this period are lower than either 13.57 cents per Mcf, or the annualized weighted average cost of purchased gas as of January 1, 1966, then Cities Service will make additional refunds to its jurisdictional customers, as required by Article V.

(5) Cities Service will flow-through the applicable jurisdictional portions of the refunds received by it, including interest, from any of its suppliers who are presently collecting rates that are the subject of pending rate proceedings before this Commission.

(6) Cities Service will compute its annualized weighted average cost per Mcf of gas purchased as of January 1, 1966, and, if the cost so computed is less than 13.57 cents per Mcf, then Cities Service will reduce its jurisdictional rates as provided in Article VII of the Agreement.

(7) Cities Service, pursuant to Commission order, will book depreciation for its depreciable storage and transmission plant at the rate of 3.125 percent, commencing May 1, 1965, and will use and record existing book depreciation rates on all of its other depreciable gas plant. Additionally, Cities Service will adjust its per book depreciation accruals for the period from May 1, 1964, through April 30, 1965, to reflect a depreciation rate of 3.125 percent on its depreciable storage and transmission plant.

(8) Cities Service agrees that (a) it will not file any increase in its jurisdictional rates and charges prior to January 1, 1966; and (b) it will not file any increase in its jurisdictional rates and charges prior to July 1, 1966, unless it has incurred, or will incur within six months from such filing, net increases in jurisdictional costs amounting to at least $1,000,000, arising from purchased gas costs and/or changes in taxes as set forth in Article IX of the Agreement.

(9) The issue relating to the allowance to be included in Cities Service's cost of service for its gas purchases from Continental Gas Producing Company (formerly Cities Service Gas Producing Company) is reserved for future hearing and decision.

(10) The issue of the proper allowance to be included in Cities Service's cost of service for gas purchased from Cities Service Oil Company and Columbian Fuel Corporation and the consolidated dockets pertaining to the rates for sales of natural gas by these affiliates to Cities Service is reserved for future hearing and decision.[3]

Cities Service, on May 20, 1965, tendered for filing the revised tariff sheets[4] required by Article II of the "Stipulation and Agreement". Cities Service requests that upon approval of the proposed settlement the Commission waive the requirements of the Regulations under the Natural Gas Act to the extent necessary to make these revised tariff sheets effective as of April 23, 1964.

---

[3] Certain of Cities Service Oil Company's pending rate increase filings involved herein have been conditionally terminated and severed from these proceedings by order issued June 3, 1965, in *Warren Petroleum Corporation (Operator), et al.*, Docket No. G-20473, *et al., supra*, p. 1212.

[4] Ninth Revised Sheets Nos. 4, 5, 7, 8, 10 and 19; Tenth Revised Sheet No. 12; Eleventh Revised Sheet No. 14; Twelfth Revised Sheet No. 16, all to Cities Service's FPC Gas Tariff, Second Revised Volume No. 1; and Ninth Revised Sheet No. 27 to Cities Service's FPC Gas Tariff, Original Volume No. 2

The Commission finds:

(1) The settlement of the proceedings in Docket No. RP64-9, *et al.*, on the basis of the "Stipulation and Agreement" (identified as Exhibit No. 96), is reasonable, proper, and in the public interest in carrying out the provisions of the Natural Gas Act, and such "Stipulation and Agreement" should be approved and made effective subject to the terms and conditions hereinafter provided and ordered.

(2) The rates and charges contained in Cities Service's revised tariff sheets tendered for filing on October 21, 1963, and March 16, 1964, are not just, reasonable or lawful under the terms and provisions of the Natural Gas Act and should be disallowed and denied as hereinafter provided and ordered.

(3) Good causes exists for the Commission to accept for filing the revised tariff sheets tendered by Cities Service on May 20, 1965, and to waive the notice requirements of the Regulations under the Natural Gas Act in order to allow those tariff sheets to become effective as hereinafter ordered.

The Commission orders:

(A) The increased rates and charges filed by Cities Service on October 21, 1963 and March 16, 1964, in these proceedings, are hereby disallowed and denied.

(B) The settlement of these proceedings, as proposed in the "Stipulation and Agreement" (Exhibit A hereto) is approved and made effective, subject to the terms and conditions hereinafter specified.

(C) The revised tariff sheets tendered by Cities Service on May 20, 1965, are accepted for filing, and the thirty-day notice requirements of Section 154.22 of the Regulations are waived to permit such revised tariff sheets to take effect as of April 23, 1964.

(D) Cities Service shall comply with each of the provisions of the "Stipulation and Agreement".

(E) Within fifteen days of making refunds in accordance with the "Stipulation and Agreement", Cities Service shall report to the Commission, in writing and under oath, the amount of the refund to each customer showing separately the amount of principal and interest so paid, together with a computation showing the manner in which such refund was determined and shall serve a copy of this report upon each customer, and shall submit to the Commission a copy of the release signed by such customer acknowledging receipt of the amount refunded.

(F) The issues pertaining to the proper allowance to be included in Cities Service's cost of service for its purchases from its affiliates, Cities Service Oil Company and Columbian Fuel Corporation (Article XI), shall be heard in accordance with the procedures established by Notice issued herein on May 25, 1965, or any subsequent notices issued therein. The issues relating to the allowance in Cities Service's cost of service for gas purchased from Continental Gas Producing Company (formerly Cities Service Gas Producing Company) are reserved in accordance with Article X of the settlement and subject to notice as provided in Section (3) of that Article.

(G) Cities Service shall adjust its depreciation accruals for the period May 1, 1964, through April 30, 1965, to reflect a depreciation rate of 3.125 percent on its depreciable storage and transmission plant, and commencing May 1, 1965, shall accrue depreciation on such storage and transmission plant at 3.125 percent and shall use existing depreciation rates on all other depreciable plant.

(H) Upon compliance with the terms and conditions of this order, the proceeding in Docket No. RP64-9 is terminated subject to the terms and provisions of the "Stipulation and Agreement".

(I) This order is without prejudice to any findings or orders which have been or may hereafter be made by the Commission, and is without prejudice to any claims or contentions which may be made by the Commission, its staff, Cities Service, or any affected party herein in any proceeding now pending, or hereafter instituted by, or against, Cities Service, or any other company or person.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

MERCED IRRIGATION DISTRICT, PROJECT NO. 88

ORDER ACCEPTING SURRENDER OF LICENSE

(Issued June 28, 1965)

Application was filed on May 4, 1965 by Merced Irrigation District, of Merced, California, for surrender of its license for major Project No. 88 consisting of Exchequer Dam, Reservoir and Powerhouse located on the Merced River in California.

The application was filed pursuant to paragraph (A) of the Commission's license order issued April 8, 1964 in Project No. 2179 (31 FPC 897, 899). The project works comprising Project No. 88 are being completely displaced by construction of New Exchequer Project No. 2179. According to the application, power production at Project No. 88 ceased at midnight August 19, 1964 to permit the demolition of the power plant of that project.

Notice of the application in Project No. 2179 was given September 20, 1958 (23 F.R. 7362).

The Commission orders:

Surrender of the license for Project No. 88 is hereby accepted, effective as of August 20, 1964.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP65-255

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND AMENDING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 28, 1965)

On February 23, 1965, Panhandle Eastern Pipe Line Company (Applicant) filed in Docket No. CP65-255 an application, as supplemented April 26 and May 18, 1965, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of natural gas facilities and the sale of additional volumes of natural gas to existing customers, all as more fully set forth in the application.

Applicant proposes to construct or install and operate: (1) approximately 196 miles of 30-inch and 36-inch loop pipeline on portions of its main line system in Kansas, Missouri, Illinois, Indiana, Ohio and Michigan; (2) a total of 27,800 horsepower of compression at its Liberal, Kansas, Haven, Kansas, Olpe, Kansas, Louisburg, Kansas, Houstonia, Missouri, Centralia, Missouri, Tuscola, Illinois, and Zionville, Indiana Compressor Stations; (3) 15.4 miles of 10-inch line on its Jefferson City Lateral in Cooper and Moniteau Counties, Missouri; 7.2 miles of 12-inch line on its Columbia Lateral in Boone County, Missouri; 15.6 miles of 22-inch line on its Peoria Lateral in Logan and Tazewell Counties, Illinois; 10.3 miles of 10-inch line on its Lincoln-Clifton Lateral in Logan County, Illinois; 11.5 miles of 12-inch line on its Tipton-Kokomo Lateral in Tipton and Hamilton Counties, Indiana; 6.1 miles of 6-inch line on its Defiance Lateral in Defiance County, Ohio; and 1.1 miles of 8-inch line on its Albion Lateral in Calhoun County, Michigan; (4) additional storage facilities, including production and gathering facilities and a total of 4,700 horsepower of compression at its Waverly Storage Field in Morgan County, Illinois and its Howell Storage Field in Livingston County, Michigan; and (5) necessary appurtenances and related facilities in connection with the above.

The expansion program outlined above will increase the Applicant's peak day capacity by approximately 235,000 Mcf, and will enable it to provide increased volumes of natural gas to its existing resale customers for the 1965–1966 winter season. Each of the 43 customers participating in this expansion has signified its desire to purchase the additional volumes of gas from Applicant.

As stated above, a portion of the facilities for which authorization is sought herein are for the further development of Applicant's Howell Storage Field in Livingston County, Michigan. By Commission order issued July 27, 1962, 28 FPC 211, in Docket No. G–2306, *et al.*, Applicant was issued a certificate of public convenience and necessity in Docket No. CP61–136 authorizing the development of Howell Field for gas storage purposes, and a maximum average storage pressure of 1030 psig was prescribed, not to be exceeded without further Commission authorization. The proposed further development of Howell Field will increase the storage pressure beyond that specified, and accordingly the order of July 27, 1962, will be amended by deleting the pressure limitation contained therein and substituting instead a volume limitation, as hereinafter ordered.

Total cost of Applicant's proposed construction is $40,064,000, and will be financed initially by means of short-term bank loans. Applicant proposes permanent financing through the issuance of approximately $30,000,000 of debentures.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on June 25, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits and supplements thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G–254 (4 FPC 1081).

(2) The proposed construction and operation of facilities and sales of natural gas hereinbefore described, as more fully described in the application in this

proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed construction and operation of facilities and sales of natural gas are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the order of the Commission issued July 27, 1962, in Docket No. G-2306, *et al.*, be amended by deleting from the examiner's decision adopted thereby the pressure limitation of 1030 psig imposed in Docket No. CP61-136 on Applicant's natural gas storage operations in the Howell Field.

The Commission orders:

(A) A certificate of public convenience and necessity is hereby issued to Applicant, Panhandle Eastern Pipe Line Company, authorizing the construction and operation of facilities and sales of natural gas hereinbefore described, as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, and the sales of natural gas shall be undertaken, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations, within 18 months from the date on which this order issues.

(D) The order of the Commission issued on July 27, 1962, in Docket No. G-2306, *et al.*, which order granted a certificate of public convenience and necessity to Applicant in Docket No. CP61-136, is hereby amended by deleting from the examiner's decision adopted thereby the pressure limitation of 1030 psig imposed on Applicant's natural gas storage operations in the Howell Field.

(E) In all other respects the authorization heretofore granted in Docket No. CP61-136 shall remain in full force and effect.

(F) The maximum reservoir gas content in Howell Storage Field is hereby limited to the volume of 23,500,000 Mcf at 14.73 psia.

(G) The certificate issued hereby is granted upon the condition that Applicant submit annual reports on its Howell Field gas storage operations showing the volumes of natural gas injected and withdrawn during each month of the year and the total inventory volume at the end of the injection cycle, the maximum daily injection and withdrawal rates experienced during the year, and the shut-in wellhead pressure of each observation well at the end of the injection cycle and also at the end of the withdrawal cycle. Such reports shall be filed with the Commission by December 31 of each year until further order of the Commission.

(H) The certificate hereby issued is granted on the express condition that the facilities and service thereby authorized shall in no way prejudice any party involved in the proceeding entitled Natural Gas Pipeline Company of America, *et al.*, Docket No. CP62-243, *et al.*, now pending before the Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

AMERICAN LOUISIANA PIPE LINE COMPANY AND TRUNKLINE GAS COMPANY, DOCKET NO. CP65-382

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 29, 1965)

On May 28, 1965, American Louisiana Pipe Line Company (American), and Trunkline Gas Company (Trunkline), filed in Docket No. CP65-382 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of emergency interconnections between the pipeline systems of the two companies, all as more fully set forth in the application.

The proposed interconnections will be located (1) approximately 400 feet west of the point where Trunkline's 26-inch main line crosses American's 22-inch main line in Elkhart County, Indiana and (2) at a point in Tate County, Mississippi, where Trunkline's 26-inch and 30-inch main lines are adjacent to American's 30-inch main line.

Trunkline and American have entered into a letter agreement which provides for the utilization of the proposed facilities for exchange purposes on a gas-for-gas basis when either company is confronted with an emergency which can be alleviated by the deliveries of natural gas from the other, without impairing their respective service obligations.

The estimated cost of the proposed facilities is $58,620, of which American's share will be $29,620 and Trunkline's share will be $29,000, and which will be financed by the respective companies from funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on July 25, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence including the application and exhibits, submitted in support of the authorizations sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, American Louisiana Pipe Line Company, a Delaware corporation having its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 1, 1954, Docket No. G-2306 (13 FPC 380).

(2) Applicant, Trunkline Gas Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 29, 1949, in Docket No. G-882 (8 FPC 250).

(3) The proposed emergency exchange and delivery of natural gas between Trunkline and American, and the construction and operation of facilities as hereinbefore described and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The aforesaid proposed emergency exchange and delivery of natural gas, and construction and operation of facilities are required by the public con-

venience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Trunkline and American are able and willing properly to do the acts and to perform the services proposed and to comply with the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(6) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder be conditioned upon Trunkline's and American's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is hereby issued to Trunkline and American in this proceeding, authorizing the emergency exchange and delivery of natural gas, and the construction and operation of facilities as hereinbefore described, all as more fully described in the application, and exhibits filed in these proceedings, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above, and the rights granted thereunder are hereby conditioned upon Trunkline and American complying with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized by paragraph (A) above shall be constructed and placed in operation within 6 months from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

BACA GAS GATHERING SYSTEM, INC., DOCKET NO. CP65–57

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 29, 1965)

By Commission order issued January 25, 1965, 33 FPC 102, in Docket No. CP65–57, Baca Gas Gathering System, Inc., (Petitioner) was issued a certificate of public convenience and necessity authorizing the construction and operation of approximately 38 miles of pipeline to gather and transport gas purchased by Petitioner from producers in Baca County, Colorado, and sold to Panhandle Eastern Pipe Line Company in Morton County, Kansas. The cost of the proposed facilities was estimated to be approximately $530,000, including $50,000 for organization expenses.

On April 23, 1965, Petitioner filed herein a petition to amend said order, requesting certain minor modifications in the facilities to be constructed pursuant to the authorization granted therein. Petitioner proposes: (1) a revision in it pipeline design by substitution of sizes and grades of pipe. Its system, as revised, will consist of 11.82 miles of 10-inch line, 8.51 miles of 8-inch line, 3.41 miles of 6-inch line, 4.74 miles of 4-inch line and 12.84 miles of 3-inch line; (2)

modification in the routing of its proposed system which will result in the net addition of 3.32 miles of line; (3) attachment of one new gas well; and (4) the addition of 300 horsepower of compression in order to raise the pressure of approximately 2,000 Mcf per day of casinghead gas to mainline pressure. The cost of this compression will be borne by the producers involved.

The above revisions will not change the estimated aggregate cost of the project, which will remain $530,000.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the petition has been filed.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience requires that the order of the Commission issued January 25, 1965, in Docket No. CP65-57 be amended as hereinafter ordered.

The Commission orders:

(A) The order of the Commission issued on January 25, 1965, in Docket No. CP65-57, is hereby amended by authorizing the modifications in Petitioner's proposed system hereinbefore described, as more fully described in its petition to amend.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

SHENANDOAH GAS COMPANY, DOCKET NO. CP65-287

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued June 29, 1965)

On March 16, 1965, as supplemented on May 17, 1965, Shenandoah Gas Company (Applicant) filed in Docket No. CP65-287 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Atlantic Seaboard Corporation (Atlantic) to establish physical connection of its transmission facilities with the proposed facilities of and to sell natural gas to Applicant for resale and distribution in the Town of Strasburg, Virginia, and environs, and, pursuant to Section 7(c) of the Act, for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application, as supplemented, in this proceeding.

Applicant proposes to construct and operate approximately 1.8 miles of 2-inch and 3-inch approach lateral line from Strasburg to Atlantic's line, together with metering and regulating facilities, as well as the distribution facilities necessary to provide service to Strasburg.

Applicant's total estimated third year peak day and annual natural gas requirements for service to Strasburg are 97 Mcf and 78,100 Mcf, respectively. These volumes assume a heating value of 1,025 Btu per cubic foot; however, Atlantic's tariff permits a minimum heating value of 950 Btu per cubic foot, in which case Applicant's third year peak day requirement would be 105 Mcf.

Applicant requests a certificate of public convenience and necessity authorizing the construction and operation of the above-described metering and regulating facilities and the approach lateral line.

Total estimated cost of the proposed facilities, including the lateral line, metering and regulating facilities and distribution facilities, is $92,800, which cost will be financed by open account advances from Washington Gas Light Company, Applicant's parent.

After due notice, no petition to intervene, notice of intervention, or protest to the granting of the application has been filed.

At a hearing held on June 25, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplement and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Shenandoah Gas Company, a corporation organized and existing under the laws of the Commonwealth of Virginia, is engaged in the business of distributing and selling natural gas in said Commonwealth and in the State of West Virginia.

(2) Applicant, Shenandoah Gas Company, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 30, 1954, in Docket No. G–1448 (13 FPC 593).

(3) Atlantic Seaboard Corporation, a Delaware corporation having its principal place of business in Charleston, West Virginia, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 29, 1955, in Docket No. G–6500 (14 FPC 692).

(4) The facilities hereinbefore described, as more fully described in the application for a certificate of public convenience and necessity in this proceeding, are to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) Applicant is able and willing properly to do the acts and to perform the services proposed in the subject certificate application and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(6) The construction and operation of the proposed facilities for which certificate authorization is herein sought by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(7) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(8) It is necessary and desirable in the public interest that Atlantic be directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver at such connection up to 97 Mcf* of natural gas per day to Applicant, as set forth in the application and as hereinafter ordered and conditioned.

---

*This volume assumes a heating value of 1,025 Btu per cubic foot; however, Atlantic's tariff permits a minimum heating value of 950 Btu per cubic foot, in which case Atlantic shall sell and deliver up to 105 Mcf per day to Applicant.

(9) Applicant should be prepared to receive natural gas from Atlantic within one year from the date of issuance of this order.

(10) The requirement that Atlantic serve Applicant, as proposed, will not place any undue burden upon Atlantic nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) A certificate of public convenience and necessity is hereby issued authorizing Applicant, Shenandoah Gas Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application for a certificate in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized in paragraph (A) above shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

(D) Atlantic Seaboard Corporation is hereby directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver at such connection up to 97 Mcf * of natural gas per day to Applicant, its estimated third year winter firm peak day requirements, all as hereinbefore described and as more fully set forth in the application in this proceeding.

(E) Applicant shall be prepared to receive natural gas from Atlantic within one year from the date of issuance of this order.

(F) Atlantic shall report to the Commission in writing the date of commencement of service to Applicant within ten days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP65-321

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 29, 1965)

On April 8, 1965, Tennessee Gas Transmission Company (Applicant), filed in Docket No. CP65-321 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of an additional submerged pipeline crossing of Lake Borgne, St. Bernard Parish, Louisiana, all as more fully set forth in the application.

The existing 30-inch main line crossing Lake Borgne is submerged. An accumulation of foreign matter within the submerged portion of the line has caused excessive pressure drop in the line. To eliminate the constriction and avoid a possible shut-down of the Delta-Portland line, Applicant proposes to construct and operate approximately 29.83 miles of 36-inch main line loop crossing Lake Borgne, which will enable Applicant to provide uninterrupted service, and make necessary repairs to the existing 30-inch line.

---

*This volume assumes a heating value of 1,025 Btu per cubic foot; however, Atlantic's tariff permits a minimum heating value of 950 Btu per cubic foot, in which case Atlantic shall sell and deliver up to 105 Mcf per day to Applicant.

The proposed additional lake crossing will cost approximately $10,252,000, which will be financed from general funds or from revolving credit.

The Commission on April 30, 1965, issued Applicant a temporary certificate authorizing the proposed facilities.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on June 25, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization, and upon consideration of the record,

The Commission finds:

(1) Applicant, Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued July 15, 1947, in Docket No. G-910 (6 FPC 777).

(2) The proposed construction and operation of facilities as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, Tennessee Gas Transmission Company, authorizing the construction and operation of facilities as more fully described in the application and exhibits in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all the applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation as provided in paragraph (b) of Section 157.20 of the Commission Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

TRANSWESTERN PIPELINE COMPANY, DOCKET NO. CP65-362; PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP65-370

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 29, 1965)

On May 17, 1965, Transwestern Pipeline Company (Transwestern) filed in Docket No. CP65-362 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and the sale of natural gas on a short-term basis, all as more fully set forth in the application.

On May 20, 1965, Panhandle Eastern Pipe Line Company (Panhandle) filed in Docket No. CP65-370 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application.

The above filings are related, and outline a proposal whereby Transwestern proposes the sale to Panhandle of up to 25,000 Mcf of natural gas per day on a short-term basis, pursuant to an agreement between the parties dated May 21, 1965. Delivery will take place at the point where Transwestern's 10-inch Cactus lateral crosses Panhandle's Sunray line in Sherman County, Texas.

The proposed sale is to be undertaken for a limited term ending December 31, 1965 or at such time as Transwestern commences deliveries to Natural Gas Pipeline Company of America pursuant to the exchange program for which authorization is being requested in Docket No. CP65-320, whichever is earlier.

Transwestern and Panhandle propose to construct and operate facilities necessary to effectuate the above-described sale of natural gas. Transwestern proposes to construct and operate a 6-inch tap valve and related facilities at an estimated cost of $1,740; Panhandle proposes to construct and operate a meter station at an estimated cost of $8,000. All construction costs will be financed with general funds.

Transwestern and Panhandle were granted temporary certificates herein by Commission letters dated May 28, 1965, authorizing construction and operation of the above facilities and sale of natural gas.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the applications has been filed.

At a hearing held on June 25, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Transwestern Pipeline Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of August 10, 1959, in Docket No. G-14871, *et al.* (22 FPC 391).

(2) Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by

the Commission in its order of October 17, 1945, in Docket No. G–254 (4 FPC 1081).

(3) The proposed construction and operation of facilities and sale of natural gas hereinbefore described, as more fully described in the applications in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) Transwestern and Panhandle are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) The proposed construction and operation of facilities and sale of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

The Commission orders:

(A) A certificate of public convenience and necessity is hereby issued to Transwestern Pipeline Company, authorizing the construction and operation of facilities and sale of natural gas hereinbefore described, as more fully described in the application in Docket No. CP65–362, upon the terms and conditions of this order.

(B) A certificate of public convenience and necessity is hereby issued to Panhandle Eastern Pipe Line Company, authorizing construction and operation of the facilities hereinbefore described, as more fully described in the application in Docket No. CP65–370, upon the terms and conditions of this order.

(C) The certificates issued by paragraphs (A) and (B) above and the rights granted thereunder are hereby conditioned upon Transwestern's and Panhandle's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(D) The facilities hereby authorized shall be constructed and placed in actual operation and the sale of natural gas shall be undertaken, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations, within 30 days from the date on which this order issues.

(E) The authorization hereby granted shall be for the limited term ending December 31, 1965 or at such time as Transwestern commences delivery of natural gas to Natural Gas Pipeline Company of America pursuant to appropriate Commission authorization in Docket No. CP65–320, whichever is earlier.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

MOUNTAIN FUEL SUPPLY COMPANY, DOCKET NO. CP65–348

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 30, 1965)

On May 3, 1965, Mountain Fuel Supply Company (Applicant) filed in Docket No. CP65–348 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a pipeline extension from Applicant's existing 10¾-inch line terminating in the State Line Field, Sweetwater County, Wyoming, to the

West Side Canal and Four-Mile Creek fields in Carbon County, Wyoming, and Moffat County, Colorado, respectively, all as more fully set forth in the application in this proceeding.

Specifically, Applicant proposes to construct and operate approximately 17 miles of 10¾-inch pipeline extending from the end of Applicant's existing 10¾-inch pipeline terminating in the State Line Field to a central delivery point in the West Side Canal Field and approximately 6 miles of 4½-inch pipeline extending from the end of the 10¾-inch line in the West Side Canal Field to a central delivery point in the Four-Mile Creek Field, together with the necessary fittings, valves, meters and other accessories.

Applicant states that the additional gas supply to be connected to its existing transmission facilities as a result of the proposed construction* will increase Applicant's reserve and help to offset the normal decline in deliverability of other reserves committed to its system, and will serve as a safety factor in the event of a failure of supply from its other sources.

The total estimated cost of the proposed facilities is $400,000, which cost will be financed from funds on hand and short term bank borrowings, as required.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on June 25, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Mountain Fuel Supply Company, a Utah corporation having its principal place of business in Salt Lake City, Utah, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 15, 1940, in Docket No. G-154 (2 FPC 288).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is hereby issued authorizing Applicant, Mountain Fuel Supply Company, to construct and operate the

---

*By Commission order issued June 30, 1965, Pan American Petroleum Corporation (Operator), *et al.*, in Docket No. CI65-1025 and Kirby Royalties, Inc. (Operator), *et al.*, in Docket No. CI65-1217 were authorized to sell natural gas to Applicant from the Four Mile Creek and West Side Canal Fields, respectively. By Commission order issued June 2, 1965, Pan American Petroleum Corporation in Docket No. CI65-1027 was authorized to sell natural gas to Applicant from the West Side Canal Field.

proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 14 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP64–228

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 30, 1965)

On May 3, 1965, Northern Natural Gas Company (Applicant) filed in Docket No. CP64–228 an application to amend the order of the Commission issued in said docket on March 9, 1965, 33 FPC 501, which order authorized Applicant to construct and operate certain natural gas facilities and to deliver up to 14,000 Mcf per day of natural gas to Consumers Cooperative Association (Consumers), all as more fully set forth in the application to amend.

Applicant seeks authorization for the construction and operation of two 4,000 horsepower compressor units at Applicant's Clifton, Kansas, compressor station in order to deliver an additional 7,000 Mcf per day to Consumers. The total contract demand of 21,000 Mcf per day is necessitated by Consumers' decision to build a 600 ton per day anhydrous ammonia fertilizer plant near Fort Dodge, Iowa, rather than the 400 ton per day plant previously proposed.

Applicant estimates the cost of the additional compressor facilities to be $2,390,100, which will be financed from cash on hand, reserve accruals and retained earnings.

Due notice of the subject application to amend and opportunity for hearing has been given by publication in the Federal Register on May 14, 1965 (30 F.R. 6666). No protest or petition to intervene has been filed concerning this amendment.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued March 9, 1965, in Docket No. CP64–228 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued March 9, 1965, in Docket No. CP64–228 is hereby amended by authorizing Northern to construct and operate two 4,000 Hp compressor units at its Clifton Compressor Station and deliver an additional 7,000 Mcf of natural gas on a firm basis to Consumers, all as hereinbefore described and as set forth in the subject application to amend.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

PACIFIC GAS & ELECTRIC COMPANY, PROJECT NO. 2479

ORDER ISSUING MINOR-PART LICENSE (TRANSMISSION LINE)

(Issued June 30, 1965)

Application was filed on June 29, 1964 and amended on August 7, 1964, by Pacific Gas & Electric Company (Applicant) of San Francisco, California, for a license under Section 4(e) of the Federal Power Act for proposed transmission line Project No. 2479 to be constructed in Eldorado and Placer Counties, California, and affecting lands of the United States within Eldorado and Tahoe National Forests. The only other lands to be occupied by the lines are either owned by Applicant or subject to easements which the latter has obtained thereon.

The proposed project consists of two transmission lines to extend from power plants of Placer County Water Agency's partly constructed hydroelectric Project No. 2079 which will connect with Applicant's interconnected transmission facilities at Gold Hill and Applicant's transmission system at Forest Hill. The lines are to be constructed by Applicant for the sole purpose of transmitting the power output of Project No. 2079 as contemplated by the license for Project No. 2079 (29 FPC 460, 461). No transmission lines were included under the license for Project No. 2079. The license for the latter project will expire on February 28, 2013.

The Chief, Forest Service, acting for the Secretary of Agriculture, who has supervision over Eldorado and Tahoe National Forests, has recommended for inclusion in any license for the transmission line project certain conditions to prevent, make advance preparations for suppression, and suppress fire on the lands to be occupied or used under the license and to minimize soil erosion and damage to aesthetic values. Applicant suggested certain modifications to the recommended conditions which were acquiesced in by the Forest Service. The modified conditions are included herein as Articles 15, 16 and 17.

According to the application, Applicant desires to complete construction by about February 1, 1966. By Article 19 herein, we are requiring commencement of construction not later than July 1, 1965 and completion not later than March 1, 1966, the date the Ralston and Middle Fork generating units of Placer County Water Agency's Project No. 2079 are expected to be operative.

We are not approving Exhibits J and K-1 (FPC No. 2479-2) filed as part of the application since they do not conform to the Commission's Rules and Regulations and should be revised. By Article 20 herein we are requiring the filing of these exhibits at a future date in conformance with the Commission's Rules and Regulations. Until such filing we are unable to fix herein the amount of annual charges to be paid under the license for the occupancy by the transmission lines of the National Forest lands involved.

The Commission finds:

(1) Applicant is a corporation organized under the laws of the State of California and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effect the purposes of a license for the project.

(2) There is no conflicting application before the Commission.

(3) The proposed project will not affect a Government dam, nor will the issuance of a minor-part license therefore, as hereinafter provided, affect the

development of any water resources for public purposes which should be undertaken by the United States.

(4) The issuance of a license for the proposed project, as hereafter provided, will not interfere or be inconsistent with the purposes for which Eldorado and Tahoe National Forests were created or acquired.

(5) The proposed transmission lines, described in the application as the French Meadows-Forest Hill 60-kv line and the Middle Fork-Gold Hill 230-kv line, are primarily lines as defined in Section 3(11) of the Federal Power Act, and are, therefore, subject to the licensing authority of the Commission.

(6) Exhibit M filed as part of the application and described in paragraph (B) below conforms to the Commission's Rules and Regulations and should be approved as part of this license.

(7) The proposed transmission lines are a minor part only of a complete project within the provisions of Section 10(i) of the Act.

(8) It will be in the public interest to waive the following terms and conditions of Part I of the Act:

Section 4(b), except the second sentence thereof; 4(e) insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(a), 10(c), insofar as it relates to depreciation reserves; 10(d), 10(f); 11; 12; 14, except insofar as the power of condemnation is reserved; 15; 18; 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

The Commission orders:

(A) This minor-part license is hereby issued under Sections 4(e) and 10(i) of the Federal Power Act (Act) to Pacific Gas & Electric Company (Licensee) for a period effective as of June 1, 1965 and terminating February 28, 2013, for the construction, operation and maintenance of transmission line Project No. 2479, subject to the terms and conditions of the Act insofar as not expressly waived herein, which Act is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Transmission line Project No. 2479 consists of:

(i) lands of the United States constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined;

(ii) such portions of the following projects works as are located thereon:

(i) A 60-kv wood-pole transmission line extending approximately 27.7 miles from the Placer County Water Agency's French Meadows Powerhouse to the Applicant's transmission system at its Forest Hill substation with taps to the Agency's Middle Fork, Ralston, and Oxbow plants; and (ii) a 230-kv wood-pole, H-frame transmission line extending approximately 39.6 miles from the Placer County Water Agency's Middle Fork Powerhouse to the Applicant's transmission system at its Gold Hill Substation; and

(iii) all other structures, equipment, or facilities used or useful in the maintenance and operation of the project and located on the project area;

which project works are more specifically described by the following exhibit which formed part of the application and which is designated and described as:

Exhibit M: Two typewritten sheets entitled, "General Descriptions and Specifications of the Transmission Lines", filed in the Commission June 29, 1964, as amended by Applicant's filing of August 7, 1964.

(C) This license is subject also to the terms and conditions set forth in Form L-8 (December 15, 1953) entitled "Terms and Conditions of License for Minor-

Part Project (Transmission Line) Affecting Lands of the United States" (14 FPC 974) which terms and conditions, designated as Articles 1 through 14, are attached hereto and made a part hereof, except for Article 9 thereof, and subject to the following special conditions set forth herein as additional articles:

Article 15. The Licensee shall do everything reasonably within its power and shall require its employees, contractors, and employees of contractors to do everything reasonably within their power, both independently and upon request of the officers of the agency concerned, to prevent, make advance preparations for suppression, and suppress fire on the lands to be occupied or used under the license. The Licensee shall be liable for, and pay the costs incurred by the United States in suppressing fires caused from construction, operation or maintenance of the project works or of the work appurtenant or accessory thereto under the license.

Article 16. Chipping of slash (limbs, small trees, tops of trees, and other such material having a main stem diameter of up to four inches) will be required in those portions of the following sections where, in the judgment of the Forest Service, such treatment is practicable and is necessary in order to assure adequate reduction of slash without fire damage to young trees and commercial timber stands not to be cleared in or adjacent to the project area:

T. 14 N., R. 14 E., Sections 16 and 17;
T. 14 N., R. 13 E., Sections 23, 24, 26, 27, 32 and 33; and
T. 13 N., R. 12 E., Sections 1, 2, 3 and 9.

Article 17. In order to minimize soil erosion, or other watershed disturbances, and damage to aesthetic values, powerline construction shall be by helicopter, by hand, or by other means specifically approved by the Forest Supervisor to accomplish these objectives, on the following portions of the project on National Forest land:

(i) The Oxbow-Forest Hill 60-kv line and the Ralston 60-kv tap; and

(ii) On steep canyon slopes in the Eldorado National Forest near Middle Fork and Ralston powerhouses.

Provided consideration shall be given to the necessity of providing access to project structures for emergency repair and maintenance purposes, to safety in construction practices, and to timely completion of the project.

Article 18. The Licensee shall commence construction of the minor-part project on or before July 1, 1965, and shall complete construction of the minor-part project on or before March 1, 1966.

Article 19. The Licensee shall pay to the United States the following annual charges effective June 1, 1965:

(i) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, $5.00; and

(ii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands used for transmission line right-of-way, an amount to be determined hereafter.

Article 20. The Licensee shall, within one year from the effective date of this license, file with the Commission revised Exhibits F, J and K in accordance with the Commission's Rules and Regulations.

(D) Exhibit M described in paragraph (B) above is hereby approved as part of this license.

(E) The terms and conditions of the Act, which it has been found above to be in the public interest to waive, are hereby excluded from this license.

(F) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license.

In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

WATER DISTRICT NO. 97 OF KING COUNTY, WASHINGTON, PROJECT NO. 2316

ORDER EXTENDING PERIOD OF PRELIMINARY PERMIT

(Issued June 30, 1965)

Application was filed on April 12, 1965, by Water District No. 97 of King County, Washington for a one-year extension of its preliminary permit for proposed Project No. 2316 to April 30, 1966. The original permit was issued for a period of two years, effective as of May 1, 1963.

Project No. 2316, known as the North Fork of the Snoqualmie River Water Supply Project, would be located in King County, near Carnation and North Bend, Washington, on the North Fork of Snoqualmie River, Lake Hancock, Calligan Lake, and Beaver and Griffin Creeks affecting lands of the United States within Snoqualmie National Forest. Applicant has established stream gages, made test borings, conducted geological and geophysical exploration, and has cooperated with State, county and Federal agencies under the permit.

Applicant requests a one-year extension of the preliminary permit in order to obtain additional streamflow data, to study the market for electric power, and to further coordinate the project with water supply, flood control efforts by King County, and the U.S. Corps of Engineers.

An extension of the period of the permit for the requested additional year would not exceed the three year limit fixed by Section 5 of the Federal Power Act.

The Commission finds:

It is not inconsistent with the public interest to extend the permit as hereinafter provided.

The Commission orders:

The period of the preliminary permit for proposed Project No. 2316 is hereby extended to and including April 30, 1966.

[illegible] it shall be [illegible] for the [illegible] days from the date of [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

APPLICATIONS OF PRODUCERS OF NATURAL GAS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY DISPOSED OF DURING THE PERIOD OF JANUARY 1, 1965 THROUGH JUNE 30, 1965; SERVICE BEGINNING SUBSEQUENT TO JUNE 7, 1954.

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
George T. Abell:					
CI65-585 El Paso Natural Gas Co.	Red Hills Area	N. Mex	Lea	3 22 65	Iss.
J. R. Abraham:					
CI65-522 El Paso Natural Gas Co.	Tapacito-Pictured Cliffs Pool.	N. Mex	Rio Arriba	1 19 65	Iss.
H. E. Acker, Agent:					
CI65-449 Hope Natural Gas Co.	Freemans Creek District.	W. Va	Lewis	1 5 65	Iss.
Robert E. Aikman, et al., d/b/a A. I. K., Ltd:					
CI65-1046 Kansas-Nebraska Natural Gas Co., Inc.	Camrick	Okla	Beaver	6 14 65	Iss.
The Algas Co.:					
CI64-1461 United Gas Pipe Line Co.	Rowe	Tex	Jim Wells	1 11 65	Iss.
William H. Allen:					
CI65-954 Northern Natural Gas Co.	Kiowa Creek	Tex	Lipscomb*	5 12 65	Iss.
Almos Gas Gathering Co., et al.:					
CI64-1384 United Gas Pipe Line Co.	Sliva	Tex	Bee	1 11 65	Iss.
Amax Petroleum Corp.:					
CI61-1659 Michigan Wisconsin Pipe Line Co.	Undesignated	Okla	Beaver	6 10 65	Iss.
CI65-551 Arkansas Louisiana Gas Co.	N. Cooper	Okla	Blaine	2 8 65	Iss.
Ambassador Oil Corp., et al.:					
CI61-253 Northern Natural Gas Co.	Elbert E. Eis Gas Unit.	Okla	Beaver	6 10 65	Iss.
Ambassador Oil Corp., Operator, et al.:					
CI65-879 Northern Natural Gas Co.	Undesignated	Tex	Ochiltree	4 22 65	Iss.
A'Mell Oil Properties, Operator, et al.:					
CI63-1160 Natural Gas Pipeline Co. of America.	Undesignated	Tex	Wise	6 10 65	Iss.
Amerada Petroleum Corp.:					
CI65-916 Northern Natural Gas Co.	Ozona Area	Tex	Crockett	5 11 65	Iss.
CI65-959 Lone Star Gas Co	Panola	Tex	Panola	5 12 65	Iss.
CI65-1213 Baca Gas Gathering System, Inc.	Greenwood*	Okla	Baca	6 30 65	Iss.

See footnotes at end of table, p. 1351.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Amerada Petroleum Corp., Operator, et al.:					
CI65-1001 Natural Gas Pipeline Co. of America.	Putnam	Okla.	Dewey	6 14 65	Iss.
Anadarko Production Co.:					
G-19337 Northern Natural Gas Co.	Camp Creek	Okla.	Beaver	6 10 65	Iss.
G-19338 Northern Natural Gas Co.	Camp Creek	Okla.	Beaver	6 10 65	Iss.
CI65-599 Kansas-Nebraska Natural Gas Co., Inc.	Bradshaw Area	Kans.	Hamilton	2 16 65	Iss.
CI65-674 Kansas-Colorado Utilities, Inc.	Hamilton	Kans.	Hugoton	1 28 65	Rej.
CI65-827 Kansas-Colorado Utilities, Inc.	Hugoton	Kans.	Hamilton	4 22 65	Iss.
CI65-1149 Northern Natural Gas Co.	N. E. Dower	Okla.	Beaver	6 18 65	Iss.
An-Son Petroleum Corp.:					
CI60-663 Michigan Wisconsin Pipe Line Co.	Laverne	Okla.	Harper	6 10 65	Iss.
CI65-779 Panhandle Eastern Pipe Line Co.	Mocane	Okla.	Beaver	3 31 65	Iss.
Anchor Production Co.:					
CI65-226 Panhandle Eastern Pipe Line Co.	South Teagarden	Okla.	Woods	4 7 65	Iss.
Anderson Petroleum, et al.:					
CI60-456 Colorado Interstate Gas Co.	Mocane	Okla.	Beaver	6 10 65	Iss.
Apache Corp.:					
G-18933 Michigan Wisconsin Pipe Line Co.	Undesignated	Okla.	Beaver	6 10 65	Iss.
CI60-203 Colorado Interstate Gas Co.	Undesignated	Okla.	Beaver	6 10 65	Iss.
CI61-120 Northern Natural Gas Co.	Undesignated	Okla.	Beaver*	6 10 65	Iss.
CI61-1339 Northern Natural Gas Co.	Barby Unit	Okla.	Beaver	6 10 65	Iss.
CI61-1422 Michigan Wisconsin Pipe Line Co.	Mocane-Laverne	Okla.	Harper	6 10 65	Iss.
Sam D. Ares & Albert L. Ares, Operator, et al.:					
CI65-857 El Paso Natural Gas Co.	Jalmat	N. Mex.	Lea	4 22 65	Iss.
D. Clayton Arnold:					
CI65-358 Hugoton Plains Gas & Oil Co.	Hugoton	Okla.	Texas	2 8 65	Iss.
Ashland Oil & Refining Co.:					
G-18117 Michigan Wisconsin Pipe Line Co.	Laverne	Okla.	Harper	6 10 65	Iss.
CI61-16 Panhandle Eastern Pipe Line Co.	Undesignated	Kans.	Morton*	6 10 65	Iss.
CI61-73 Colorado Interstate Gas Co.	Eubanks	Kans.	Haskell	6 10 65	Iss.
CI65-441 Natural Gas Pipeline Co. of America.	Undesignated	Okla.	Dewey	1 5 65	Iss.

See footnotes at end of table, p. 1351.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Ashland Oil & Refining Co.—Continued					
CI65-545 Northern Natural Gas Co.	N. Linscott	Okla	Ellis	1 25 65	Iss.
CI65-660 United Fuel Gas Co.	The T. R. Joseph Lease.	W. Va	Mingo	3 2 65	Iss.
CI65-828 Panhandle Eastern Pipe Line Co.	Undesignated	Okla	Woods	4 22 65	Iss.
The Atlantic Refining Co.:					
G-18288 Northern Natural Gas Co.	South Glenwood	Okla	Beaver	6 10 65	Iss.
CI60-459 Tennessee Gas Transmission Co.	Englehart	Tex	Colorado	1 7 65	Iss.
CI61-291 Transwestern Pipeline Co.	N. E. Elmwood*	Okla	Cimarron*	1 7 65	Iss.
CI61-482 Natural Gas Pipeline Co. of America.	N. E. Thomasville	Tex	Webb*	1 7 65	Iss.
CI61-954 Michigan Wisconsin Pipe Line Co.	Lovesdale*	Okla	Harper	6 10 65	Iss.
CI63-576 Montana-Dakota Utilities Co.	Riverton Dome	Wyo	Fremont	3 25 65	Iss.
CI63-1490 Panhandle Eastern Pipe Line Co.	N. W. Midwell	Okla	Cimarron	1 7 65	Iss.
CI65-360 El Paso Natural Gas Co.	Payton	Tex	Pecos	1 5 65	Iss.
CI65-453 Northern Natural Gas Co.	Ozona	Tex	Crockett	1 5 65	Iss.
CI65-571 El Paso Natural Gas Co.	Basin Dakota	N. Mex.	San Juan	2 8 65	Iss.
The Atlantic Refining Co., Operator, et al.:					
CI65-897 Cities Service Gas Co.	N. W. Lovedale	Okla	Harper	5 11 65	Iss.
Fred Attaya:					
CI65-452 Texas Eastern Transmission Corp.	Altair	Tex	Colorado	1 5 65	Iss.
John J. August, et al.:					
CI65-721 El Paso Natural Gas Co.	Rio Blanco	N. Mex	Rio Arriba	3 22 65	Iss.
Austral Oil Co., Inc.:					
CI65-849 El Paso Natural Gas Co.	Dakota Sand Property.	N. Mex	San Juan	4 15 65	Iss.
Aztec Oil & Gas Co.:					
CI65-629 El Paso Natural Gas Co.	Gallegos	N. Mex	San Juan	2 19 65	Iss.
CI65-829 El Paso Natural Gas Co.	Jalmat	N. Mex	Lea	4 13 65	Iss.
BTA Oil Producers, Operator, et al.:					
CI65 616 El Paso Natural Gas Co.	Spraberry Trend Area.	Tex	Reagan	2 19 65	Iss.
John S. Bailey, Jr., et al.:					
CI65 892 Hope Natural Gas Co.	Lee District	W. Va	Calhoun	4 22 65	Iss.
The Ballard & Cordell Corp.:					
CI65-1157 Trunkline Gas Co.	Cowpen Creek	La	Beauregard	6 14 65	Iss.
Otto C. Barby, et al.:					
CI62-451 Michigan Wisconsin Pipe Line Co.	Undesignated	Okla	Beaver	6 10 65	Iss.

See footnotes at end of table, p. 1351.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Barnwell Production Co.:					
CI65-557 Southern Natural Gas Co.	Lake St. Catherine	La.	Orleans	2 8 65	Iss.
Beard Oil Co.:					
CI65-754 Arkansas Louisiana Gas Co.	Wilburton	Okla.	Latimer	3 31 65	Iss.
Benedum-Trees Oil Co.:					
CI65-1045 Northern Natural Gas Co.	East Balko	Okla.	Beaver	6 14 65	Iss.
Earl A. Benson, Estate:					
CI65-775 El Paso Natural Gas Co.	Basin Dakota	N. Mex.	San Juan	5 11 65	Iss.
Gus Berry:					
CI65-893 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	4 22 65	Iss.
CI65-903 Consolidated Gas Supply Corp.	Sherman District	W. Va.	Calhoun	5 11 65	Iss.
Thomas E. Berry:					
G-16971 Colorado Interstate Gas Co.	Mocane	Okla.	Beaver	6 10 65	Iss.
CI62-457 El Paso Natural Gas Co.	Undesignated	Okla.	Beaver	3 22 65	Iss.
CI65-434 Panhandle Eastern Pipe Line Co.	Undesignated	Okla.	Beaver	1 5 65	Iss.
Thomas E. Berry, et al.:					
CI60-785 Michigan Wisconsin Pipe Line Co.	Laverne	Okla.	Harper	6 10 65	Iss.
CI65-540 Hope Natural Gas Co.	Sherman District	W. Va.	Calhoun	1 25 65	Iss.
Thomas N. Berry & Co., Operator, et al.:					
CI65-1022 Cities Service Gas Co.	Cherryvale	Okla.	Grant	6 2 65	Iss.
Betz Oil, Inc.:					
CI65-723 Lake Shore Pipe Line Co.	Bushnell	Pa.	Eire	3 31 65	Iss.
Big Chief Drilling Co.:					
G-18111 Colorado Interstate Gas Co.	Keyes Area	Okla.	Cimarron*	6 10 65	Iss.
Bolin Oil Co.:					
CI65-822 El Paso Natural Gas Co.	South Blanco	N. Mex.	Rio Arriba	5 11 65	Iss.
Bonnett Incorporated of West Virginia:					
CI65-1020 United Fuel Gas Co.	Henry District	W. Va.	Clay	6 14 65	Iss.
Ben F. Brack:					
G-6453 Kansas-Nebraska Natural Gas Co., Inc.	Undesignated	Kans.	Kearny	2 16 65	Iss.
Bradco Oil & Gas Co., Operator, et al.:					
CI65-1037 Bluebonnet Gas Corp.	Lottie	La.	Pointe Coupee	6 14 65	Iss.
Edwin G. Bradley, et al.:					
G-12833 Colorado Interstate Gas Co.	Greenwood	Kans.	Morton	6 10 65	Iss.

See footnotes at end of table, p. 1351.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
The Bradley Producing Corp.:					
G-20148 Colorado Interstate Gas Co.	Greenwood	Kans.	Morton	6 10 65	Iss.
CI62-1367 Michigan Wisconsin Pipe Line Co.	Laverne	Okla.	Harper	6 10 65	Iss.
The Bradley Producing Corp., Operator, et al.:					
G-19480 Colorado Interstate Gas Co.	Greenwood	Kans.	Morton	6 10 65	Iss.
Bridwell Oil Co.:					
CI65-1032 United Gas Pipe Line Co.	Willman	Tex.	San Patricio	6 18 65	Iss.
H. C. Brillhart, Jr.:					
CI64-656 Northern Natural Gas Co.	Perryton	Tex.	Ochiltree	1 19 65	Iss.
The British-American Oil Producing Co.:					
CI65-923 El Paso Natural Gas Co.	Payton	Tex.	Pecos	5 11 65	Iss.
Brooks Gas Corp.:					
CI65-700 Northern Natural Gas Co.	Velrex	Tex.	Schleicher	4 15 65	Iss.
Charles Bury:					
CI65-435 Hope Natural Gas Co.	Warren District	W. Va.	Upshur	1 5 65	Iss.
W. H. Busch, et al.:					
CI65-773 Equitable Gas Co.	Salt Lake District	W. Va.	Braxton	3 31 65	Iss.
CWM and VLM Trust:					
CI65-875 El Paso Natural Gas Co.	Basin Dakota	N. Mex.	San Juan	5 11 65	Iss.
Cabot Corp.:					
G-20250 Colorado Interstate Gas Co.	Keyes	Okla.	Cimarron	6 10 65	Iss.
CI60-105 Panhandle Eastern Pipe Line Co.	Undesignated	Okla.	Beaver*	6 10 65	Iss.
CI60-466 Northern Natural Gas Co.	Laverne*	Okla.	Beaver	6 10 65	Iss.
CI60-471 Colorado Interstate Gas Co.	Laverne	Okla.	Harper	6 10 65	Iss.
CI61-540 Colorado Interstate Gas Co.	Mocane	Okla.	Beaver	6 10 65	Iss.
CI61-711 Transwestern Pipeline Co.	Undesignated	Okla.	Beaver	6 10 65	Iss.
CI61-1391 Panhandle Eastern Pipe Line Co.	Mocane-Laverne	Okla.	Beaver	6 10 65	Iss.
CI62-1247 El Paso Natural Gas Co.	Laverne	Okla.	Beaver	3 22 65	Iss.
CI62-1332 Colorado Interstate Gas Co.	Laverne	Okla.	Harper	6 10 65	Iss.
Francis E. Cain, Agent:					
CI65-457 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	1 5 65	Iss.
N. Bruce & Curtis E. Calder, Jr.:					
CI61-1703 El Paso Natural Gas Co.	Horizon No. 1-4-Dodson A.	Tex.	Ochiltree	3 22 65	Iss.
Callery Properties, Inc., Operator, et al.:					
CI65-495 American Louisiana Pipe Line Co.	Loisel	La.	Iberia	1 19 65	Iss.

See footnotes at end of table, p. 1351.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Callery Properties, Inc., Operator, et. al.—Continued					
CI65-496 United Fuel Gas Co.	Florence	La	Vermilion Parish.	1 19 65	Iss.
CI65-497 Hope Natural Gas Co.	West Rayne	La	Acadia Parish	1 19 65	Iss.
Inez Calmes, Exec. of Estate of Kermit W. Calmes, Deceased:					
CI65-691 Lone Star Gas Co.	East Doyle	Okla	Stephens	3 31 65	Iss.
Cal-Ray Petroleum Corp.:					
CI60-614 Michigan Wisconsin Pipe Line Co.	Laverne	Okla	Harper	6 10 65	Iss.
CI62-1439 Michigan Wisconsin Pipe Line Co.	Undesignated	Okla	Harper	6 10 65	Iss.
M. D. Carey, Operator, et al.:					
CI65-546 Hope Natural Gas Co.	Grant District	W. Va	Doddridge	1 25 65	Iss.
CI65-889 Hope Natural Gas Co.	Grant District	W. Va	Doddridge	4 22 65	Iss.
CI65-891 Hope Natural Gas Co.	Grant District	W. Va	Doddridge	4 22 65	Iss.
George A. Carlson:					
CI65-743 Arkansas Louisiana Gas Co.	N. Enid	Okla	Garfield	3 31 65	Iss.
Carrio Petroleum Corp.:					
CI65-920 Valley Gas Transmission, Inc.	Buena Suerta	Tex	Duval	5 11 65	Iss.
Carter Jones Drilling Co., Inc.:					
G-14980 Natural Gas Pipeline Co. of America.	Wise County Area	Tex	Wise	6 10 65	Iss.
Mrs. Helen Carver, d/b/a Anthony Oil Co., Operator, et al.:					
CI65-973 United Gas Pipe Line Co.	Greenwood-Waskom.	La	Caddo	6 2 65	Iss.
A. E. Cavender, et al.:					
CI65-568 Hope Natural Gas Co.	Troy District	W. Va	Gilmer	2 8 65	Iss.
Cequin Corp., Operator, et al.:					
CI65-896 Gas Transport, Inc.	Ravenswood	W. Va	Jackson	5 11 65	Iss.
Champlin Petroleum Co.:					
G-18065 Colorado Interstate Gas Co.	Mocane	Okla	Beaver	6 10 65	Iss.
Lewis Chandler:					
CI65-776 El Paso Natural Gas Co.	Dakota Formation	N. Mex	San Juan	4 7 65	Iss.
Chase Petroleum Co., et al.:					
CI65-753 El Paso Natural Gas Co.	Spraberry Trend Area.	Tex	Upton	3 31 65	Iss.
Chase Petroleum Co. Operator, Agent:					
CI65-941 El Paso Natural Gas Co.	Spraberry Trend Area.	Tex	Upton	6 2 65	Iss.
CI65-948 El Paso Natural Gas Co.	Spraberry Trend Area.	Tex	Upton	5 21 65	Iss.
Cherosage Enterprises, Inc., Operator, et al.:					
CI65-955 J. A. Heard d/b/a Heard Oil & Gas.	Quinto Creek	Tex	Jim Wells	6 2 65	Iss.

See footnotes at end of table, p. 1351.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Chester Oil Co., et al.:					
CI63-969 Hope Natural Gas Co.	Lee	W. Va	Calhoun	4 7 65	Iss.
The Chicago Bears Football Club, Inc.:					
CI65-962 Consolidated Gas Supply Corp.	Warren District	W. Va	Upshur	5 12 65	Iss.
Chiles Drilling Co., Operator, et al.:					
CI64-1443 Almos Gas Gathering Co.	Linke	Tex	Bee	1 11 65	Iss.
F. M. Chisler & Harry C. Boggs:					
CI65-688 Hope Natural Gas Gas Co.	Birch District	W. Va	Braxton	3 2 65	Iss.
Citizens Oil Co.:					
CI65-756 Kansas-Nebraska Natural Gas Co., Inc.:	Undesignated	Colo	Weld	3 31 65	Iss.
Clark Fuel Producing Co., et al.:					
CI65-823 Natural Gas Pipeline Co. of America.	Mobeetie	Tex	Wheeler	4 13 65	Iss.
N. G. Clark:					
CI65-1014 Equitable Gas Co.	Court House District.	W. Va	Lewis	6 2 65	Iss.
Colorado Oil and Gas Corp.:					
CI60-781 Michigan Wisconsin Pipe Line Co.	Laverne	Okla	Beaver	6 10 65	Iss.
CI61-514 El Paso Natural Gas Co.	Clear Lake	Okla	Beaver	3 22 65	Iss.
CI65-1015 Cities Service Gas Co.	Nurse, Northeast	Kans	Barber	6 2 65	Iss.
Columbian Fuel Corp., et al.:					
CI60-169 Colorado Interstate Gas Co.	Undesignated	Kans	Morton	6 10 65	Iss.
Consolidation Coal Co., et al.:					
CI65-623 United Fuel Gas Co.	Maiden Spring District.	Va	Tazewell	2 19 65	Iss.
Consolidated Gas and Oil, Inc.:					
CI65-710 United Gas Pipe Line Co.	Willman	Tex	San Patricio	4 7 65	Iss.
Continental Oil Co.:					
CI60-634 Michigan Wisconsin Pipe Line Co.	Undesignated	Okla	Harper*	6 10 65	Iss.
CI61-1642 Michigan Wisconsin Pipe Line Co.	Buffalo	Okla	Harper*	6 10 65	Iss.
CI63-201 Panhandle Eastern Pipe Line Co.	Elk City Hoxbar Sand Conglomerate Unit.	Okla	Beckham*	5 11 65	Iss.
CI65-264 Michigan Wisconsin Pipe Line Co.	Putnam Area	Okla	Dewey	2 8 65	Iss.
CI65-518 El Paso Natural Gas Co.	Hiway Block	N. Mex	San Juan	1 28 65	Wtd.
CI65-630 Lone Star Gas Co.	JGS	Tex	Panola	2 19 65	Iss.
CI65-918 Montana-Dakota Utilities Co.	Alkali Creek	Wyo	Fremont	4 30 65	Rej.
CI65-997 El Paso Natural Gas Co.	Various	N. Mex	Rio Arriba*	6 2 65	Iss.
CI65-1009 Natural Gas Pipeline Co. of America.	Mobeetie Area	Tex	Wheeler	6 2 65	Iss.

See footnotes at end of table, p. 1351.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Continental Oil Co., Operator, et al.:					
CI65-734 Mountain Fuel Supply Co.	Canyon Creek	Wyo	Sweetwater	3 22 65	Iss.
Roy L. Cook:					
CI65-509 Southern Union Gathering Co.	Dakota Formation	N. Mex	San Juan	1 19 65	Iss.
W. J. Coppinger, Operator, et al.:					
CI65-848 Northern Natural Gas Co.	Eubank	Kans	Haskell	4 15 65	Iss.
Edwin L. Cox:					
G-17222 Colorado Interstate Gas Co.	Greenwood	Kans	Morton	6 10 65	Iss.
CI60-25 Michigan Wisconsin Pipe Line Co.	Laverne	Okla	Harper*	6 10 65	Iss.
CI60-808 Cimarron Transmission Co.	SW Enville	Okla	Love	6 10 65	Iss.
CI61-1309 Cimarron Transmission Co.	Undesignated	Okla	Love	6 10 65	Iss.
CI61-1666 Cimarron Transmission Co.	Undesignated	Okla	Love	6 10 65	Iss.
CI65-1023 Anadarko Production Co.	Interstate	Kans	Morton	6 2 65	Iss.
John L. Cox, Operator, et al.:					
CI65-671 El Paso Natural Gas Co.	Rocker B Ranch	Tex	Reagan	3 2 65	Iss.
Milo M. Craig:					
CI65-627 Oklahoma Natural Gas Gathering Corp.	Undesignated	Okla	Major	3 2 65	Iss.
Creslenn Oil Co., Inc.:					
CI65-492 Hope Natural Gas Co.	Salt Lick District	W. Va	Braxton*	1 19 65	Iss.
CI65-643 Hope Natural Gas Co.	Grant District	W. Va	Ritchie	3 2 65	Iss.
CI65-714 Hope Natural Gas Co.	Geary District	W. Va	Roane	3 22 65	Iss.
Creslenn Oil Co., Inc., et al.:					
CI65-681 Hope Natural Gas Co.	Grant District	W. Va	Ritchie	3 2 65	Iss.
Crestmont Oil Co., Operator, et al.:					
G-19420 Natural Gas Pipeline Co. of America.	Undesignated	Tex	Wise	6 10 65	Iss.
Crone Oil Co., Operator, et al.:					
CI62-605 Transwestern Pipeline Co.	S. Bernstein	Tex	Hansford	4 13 65	Iss.
CI65-711 El Paso Natural Gas Co.	Spraberry	Tex	Midland	3 22 65	Iss.
CI65-730 El Paso Natural Gas Co.	Spraberry	Tex	Midland	3 22 65	Iss.
CI65-731 El Paso Natural Gas Co.	Spraberry	Tex	Midland	3 22 65	Iss.
CI65-768 El Paso Natural Gas Co.	Spraberry	Tex	Reagan	4 13 65	Iss.
Dabney Crump, et al.:					
CI65-641 Hope Natural Gas Co.	Grant District	W. Va	Ritchie	3 2 65	Iss.
CI65-642 Hope Natural Gas Co.	Murphy District	W. Va	Ritchie	3 2 65	Iss.

See footnotes at end of table, p. 1351.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Virgil E. Daugherty, Agent:					
CI65-900 Consolidated Gas Supply Corp.	Center District	W. Va.	Gilmer	5 11 65	Iss.
DEB Oil & Gas Co.:					
CI65-874 Hope Natural Gas Co.	Warren District	W. Va.	Upshur	4 22 65	Iss.
Dekalb Oil & Gas Development Co.:					
CI65-899 Equitable Gas Co.	Salt Lick District	W. Va.	Braxton	5 11 65	Iss.
Delta Drilling Co., Operator, et al.:					
CI65-581 Northern Natural Gas Co.	Ozona Plant	Tex.	Crockett	3 2 65	Iss.
CI65-594 Northern Natural Gas Co.	Ozona Plant	Tex.	Crockett	3 2 65	Iss.
Dillion & Bruns:					
CI64-1475 The Algas Co.	Rowe	Tex.	Jim Wells	1 11 65	Iss.
Dominion Oil & Gas Co:					
CI65-644 Hope Natural Gas Co.	Center District	W. Va.	Ritchie	3 2 65	Iss.
W. H. Doran, Jr.:					
CI65-790 United Gas Pipe Line Co.	Lou Ella	Tex.	San Patricio	4 15 65	Iss.
CI65-938 United Gas Pipe Line Co.	West San Diego	Tex.	Duval	5 11 65	Iss.
Claude Drake, Jr.:					
CI65-805 United Fuel Gas Co.	Geary	W. Va.	Roane	4 7 65	Iss.
Thomas A. Dugan:					
CI65-534 El Paso Natural Gas Co.	Blanco-Mesa Verde	N. Mex.	Rio Arriba	1 25 65	Iss.
Walter Duncan:					
CI65-180 El Paso Natural Gas Co.	Basin Dakota	N. Mex.	San Juan	2 19 65	Iss.
Don Earney:					
CI65-612 El Paso Natural Gas Co.	Undesignated	Okla.	Beckham	2 16 65	Iss.
Eason Oil Co.:					
CI60-772 Panhandle Eastern Pipe Line Co.	Undesignated	Okla.	Beaver	6 10 65	Iss.
CI61-235 Michigan Wisconsin Pipe Line Co.	Undesignated	Okla.	Beaver*	6 10 65	Iss.
CI61-1466 Colorado Interstate Gas Co.	Gonser Unit	Okla.	Harper	6 10 65	Iss.
T. W. Eason, et al.:					
CI60-805 Michigan Wisconsin Pipe Line Co.	Undesignated	Okla.	Harper*	6 10 65	Iss.
Eason Oil Co.:					
CI60-773 Northern Natural Gas Co.	Undesignated	Okla.	Beaver	6 10 65	Iss.
E. K. Edmiston:					
CI65-480 Cities Service Gas Co.	Sharon Northwest	Kans.	Barber	1 11 65	Iss.
Etchieson & Gross Associates:					
CI65-75 Phillips Petroleum Co.	Hugoton	Tex.	Texas	1 11 65	Iss.
Ethieson & Gross Associates, Operator, et al.:					
CI65-503 Panhandle Eastern Pipe Line Co.	Spooney	Tex.	Hansford*	1 19 65	Iss.

See footnotes at end of table, p. 1351.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Fairman Drilling Co.:					
CI65-570 New York State Natural Gas Corp.	Big Run Pool	Pa	Jefferson	2 8 65	Iss.
CI65-632 New York State Natural Gas Corp.	Big Run Pool	Pa	Jefferson	2 19 65	Iss.
CI65-633 New York State Natural Gas Corp.	Big Run Pool	Pa	Jefferson	2 19 65	Iss.
CI65-651 New York State Natural Gas Corp.	Big Run Pool	Pa	Clearfield	3 2 65	Iss.
CI65-652 New York State Natural Gas Corp.	Big Run Pool	Pa	Jefferson	3 2 65	Iss.
CI65-653 New York State Natural Gas Corp.	Big Run Pool	Pa	Jefferson	4 13 65	Iss.
CI65-654 New York State Natural Gas Corp.	Big Run Pool	Pa	Jefferson	3 15 65	Iss.
CI65-655 New York State Natural Gas Corp.	Big Run Pool	Pa	Jefferson	3 2 65	Iss.
CI65-656 New York State Natural Gas Corp.	Big Run Pool	Pa	Jefferson	3 15 65	Iss.
CI65-945 Consolidated Gas Supply Corp.	Big Run Pool	Pa	Jefferson	5 12 65	Iss.
CI65-946 Consolidated Gas Supply Corp.	Big Run Pool	Pa	Jefferson	5 12 65	Iss.
CI65-1146 Consolidated Gas Supply Corp.	Big Run Pool	Pa	Jefferson	6 18 65	Iss.
Falcon Seaboard Drilling Co., Operator, et al.:					
CI65-488 Northern Natural Gas Co.	Northeast Eubank	Kans	Haskell	1 19 65	Iss.
Martha Featherstone:					
CI65-757 Colorado Interstate Gas Co.	Patrick Draw	Wyo	Sweetwater	3 25 65	Iss.
Olen F. Featherstone & Martha Featherstone:					
CI65-844 Montana-Dakota Utilities Co.	Poison Creek Unit*	Wyo	Fremont	4 15 65	Iss.
Olen F. Featherstone, et al.:					
CI65-770 El Paso Natural Gas Co.	Custer Mountain Unit.	N. Mex	Lea	3 31 65	Iss.
Willard E. Ferrell, Agent:					
CI65-566 Equitable Gas Co.	Troy District	W. Va	Gilmer	2 8 65	Iss
CI65-972 Equitable Gas Co.	Troy District	W. Va	Gilmer	5 21 65	Iss.
Leland Fikes, Operator, et al.:					
CI66-392 Texas Gas Transmission Corp.	North Welsh	La	Jefferson Davis	1 4 65	Iss.
Richard M. Finder:					
CI61-1043 Tennessee Gas Transmission Co.	East Alice	Tenn	Jim Wells	3 23 65	Iss.
First Transportation Gas Corp., Inc.:					
CI65-1021 Northern Natural Gas Co.	Undesignated	Okla	Ellis	6 2 65	Iss.
The Fluor Corp., Ltd.:					
CI65-415 El Paso Natural Gas Co.	Payton	Tex	Pecos	3 2 65	Iss.
Foree Drilling Co., et al.:					
G-16004 Northern Natural Gas Co.	West Gate	Okla	Beaver	6 10 65	Iss.

See footnotes at end of table, p. 1351.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [5]
Forest Oil Corp.:					
G-18239 Michigan Wisconsin Pipe Line Co.	Laverne	Okla.	Harper	6 10 65	Iss.
G-18250 Michigan Wisconsin Pipe Line Co.	Laverne	Okla.	Harper	6 10 65	Iss.
CI61-392 El Paso Natural Gas Co.	Clear Lake	Okla.	Beaver	3 22 65	Iss.
CI65-883 Texas Eastern Transmission Corp.	Dallas Husky	Tex.	Goliad	5 21 65	Iss.
CI65-884 Texas Eastern Transmission Corp.	Dallas Husky	Tex.	Goliad	5 11 65	Iss.
John Franks:					
CI64-554 United Gas Pipe Line Co.	Maxie-Pistol Ridge	Miss.	Forrest	5 11 65	Iss.
E. L. Fundingsland:					
CI65-437 El Paso Natural Gas Co.	Undesignated	N. Mex.	San Juan	1 5 65	Iss.
Roy Furr, Operator, et al.:					
CI65-693 Northern Natural Gas Co.	Undesignated	Tex.	Hutchison	3 2 65	Iss.
GMC Oil & Gas Corp., et al.:					
CI65-766 Michigan Wisconsin Pipe Line Co.	Richmond Pool	Okla.	Woodward	3 31 65	Iss.
Gilcrease Operating Co., Operator, et al.:					
CI64-1188 J. A. Heard	Quinto Creek	Tex.	Jim Wells	1 11 65	Iss.
Glasscock-Chapman, Inc., Operator, et al.:					
CI65-859 Bluebonnet Gas Corp.	North Edna	La.	Jefferson	6 14 65	Iss.
Lonnie Glasscock, Jr. & Woodrow Glasscock:					
CI64-1145 J. A. Heard	Quinto Creek	Tex.	Jim Wells	1 11 65	Iss.
Global Oils, Inc.:					
CI61-868 Natural Gas Pipeline Co. of America.	Hazel Guthrie No. 1 Well.	Okla.	Woodward	6 10 65	Iss.
Global Oils, Inc., Operator, et al.:					
CI61-26 Michigan Wisconsin Pipe Line Co.	Laverne	Okla.	Harper	6 10 65	Iss.
Goff Oil Co., et al.:					
CI65-416 Panhandle Eastern Pipe Line Co.	South Teagarden	Okla.	Woods	1 5 65	Iss.
Steve Gose, Operator, et al.:					
CI65-924 Fort Smith Gas Corp.	Spira	Okla.	Le Flore	5 11 65	Iss.
Graham-Michaelis Drilling Co., et al.:					
G-19318 Colorado Interstate Gas Co.	Sparks	Kans.	Stanton	6 10 65	Iss.
Great Plains Land Co., et al.:					
CI65-984 United Gas Pipe Line Co.	Ada	La.	Bienville	6 2 65	Iss.

See footnotes at end of table, p. 1351.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Arden R. Grover, et al.:					
CI65-668 El Paso Natural Gas Co.	Undesignated	Tex	Sutton	3 2 65	Iss.
Wm. Gruenerwald, Operator, et al.:					
CI65-498 Panhandle Eastern Pipe Line Co.	Carthage	Okla	Texas	1 19 65	Iss.
Joseph S. Gruss, Agent:					
CI65-716 Hope Natural Gas Co.	Union District	W. Va	Ritchie	3 22 65	Iss.
CI65-912 Equitable Gas Co.	Union District	W. Va	Ritchie	5 11 65	Iss.
Gulf Oil Co.:					
CI64-25 Kansas-Nebraska Natural Gas Co., Inc.	Dolis Hill	Wyo	Fremont	1 19 65	Iss.
CI65-702 Northern Natural Gas Co.	Hansford Lower Morrow.	Tex	Hansford*	3 15 65	Iss.
CI65-708 Northern Natural Gas Co.	Bradford Tonkawa Area.	Tex	Lipscomb	3 15 65	Iss.
CI65-738 Northern Natural Gas Co.	Clementine Upper Morrow.	Tex	Hansford	3 22 65	Iss.
CI65-792 Lone Star Gas Co.	North Dibble	Okla	McClain	3 31 65	Iss.
CI65-799 Natural Gas Pipeline Co. of America.	Mobeetie	Tex	Wheeler	4 7 65	Iss.
CI65-917 Michigan Wisconsin Pipe Line Co.	Laverne	Okla	Harper	5 11 65	Iss.
CI65-1000 Panhandle Eastern Pipe Line Co.	Frantz	Tex	Ochiltree*	6 2 65	Iss.
CI65-1166 Northern Natural Gas Co.	Hansford	Tex	Hansford	6 18 65	Iss.
Gulf Oil Corp., Operator, et al.:					
CI65-1169 Panhandle Eastern Pipe Line Co.	Einsel	Kans	Kiowa	6 18 65	Iss.
P. P. Gunn, Agent:					
CI65-450 Hope Natural Gas Co.	Lee District	W. Va	Calhoun	1 5 65	Iss.
P. P. Gunn, et al.:					
CI65-569 Hope Natural Gas Co.	Lee District	W. Va	Calhoun	2 8 65	Iss.
Victor Hale:					
CI65-895 Kentucky West Virginia Gas Co.	Middle Creek	Ky	Floyd	4 22 65	Iss.
Brooks Hall, et al.:					
CI65-1041 Arkansas Louisiana Gas Co.	Lacey Area	Okla	Kingfisher	6 14 65	Iss.
Frank J. Hall, Operator, et al.:					
CI65-574 United Gas Pipe Line Co.	Sibley	La	Webster	3 31 65	Iss.
Hall-Jones, Ltd., Operator:					
CI62-1073 Michigan Wisconsin Pipe Line Co.	Laverne	Okla	Harper	6 10 65	Iss.
Hamilton Brothers, Ltd.:					
CI61-1775 Panhandle Eastern Pipe Line Co.	Undesignated	Okla	Texas	6 10 65	Iss.
CI62-488 Colorado Interstate Gas Co.	Mocane	Okla	Beaver	6 10 65	Iss.
CI62-737 Colorado Interstate Gas Co.	Undesignated	Kans	Morton	6 10 65	Iss.

See footnotes at end of table.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Blake Hamman, Operator, et al.:					
CI63-1257 Natural Gas Pipeline Co. of America.	Boonesville Bend Conglomerate.	Tex.	Wise	6 10 65	Iss.
Jake L. Hamon:					
CI65-502 TranswesternPipeline Co.	West Feldman	Tex.	Hemphill	1 19 65	Iss.
Hanley and Bird:					
CI65-809 New York State Natural Gas Corp.	Big Run	Pa.	Jefferson	4 7 65	Iss.
Hanley Co., et al.:					
CI65-745 El Paso Natural Gas Co.	Spraberry Area	Tex.	Reagan	6 28 65	Iss.
CI65-752 El Paso Natural Gas Co.	Spraberry Area	Tex.	Reagan	5 12 65	Iss.
Har-Ken Oil Co., Operator, et al.:					
CI65-762 Texas Gas Transmission Corp.	Morton Gap Area	Ky.	Hopkins	3 31 65	Iss.
Harper Oil Co.:					
CI60-146 Northern Natural Gas Co.	Undesignated	Okla.	Beaver	6 10 65	Iss.
CI61-5 El Paso Natural Gas Co.	Ridgeway	Okla.	Beaver	3 15 65	Iss.
CI61-155 Panhandle Eastern Pipe Line Co.	Undesignated	Okla.	Beaver	6 10 65	Iss.
CI61-795 Natural Gas Pipeline Co. of America.	Undesignated	Okla.	Woodward	6 10 65	Iss.
CI62-1299 Colorado Interstate Gas Co.	Undesignated	Okla.	Harper	6 10 65	Iss.
CI65-670 Colorado Interstate Gas Co.	Laverne	Okla.	Beaver	1 29 65	Rej.
Harper Oil Co., Operator:					
CI62-688 Colorado Interstate Gas Co.	Laverne	Okla.	Harper	6 10 65	Iss.
Harper Oil Co., Operator, et al.:					
CI60-590 Colorado Interstate Gas Co.	Laverne	Okla.	Harper	6 10 65	Iss.
Dewey Harris, et al.:					
CI65-459 Hope Natural Gas Co.	Warren District	W. Va.	Upshur	1 5 65	Iss.
James W. Harris, Operator, et al.:					
CI65-807 Southern Natural Gas Co.	Gwinville	Miss.	Jefferson Davis	5 21 65	Iss.
CI65-808 United Gas Pipe Line Co.	Gwinville	Miss.	Jefferson Davis	5 21 65	Iss.
CI65-949 United Gas Pipe Line Co.	Baxterville	Miss.	Lamar	5 12 65	Iss.
E. C. Hartman, Agent:					
CI65-818 Equitable Gas Co.	Union	W. Va.	Ritchie	4 7 65	Iss.
L. E. Haught, Agent:					
CI65-527 Hope Natural Gas Co.	Sheridan	W. Va.	Calhoun	1 19 65	Iss.
Haynes & V. T. Drilling Co., Operator, et al.:					
CI64-1162 J. A. Heard	Quinto Creek	Tex.	Jim Wells	1 11 65	Iss.

See footnotes at end of table, p. 1351.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Hays & Co., Agent:					
CI65-639 Hope Natural Gas Co.	Salt Lick District	W. Va.	Braxton	3 2 65	Iss.
CI65-682 Hope Natural Gas Co.	Lee District	W. Va.	Calhoun	3 2 65	Iss.
CI65-769 Hope Natural Gas Co.	WashingtonDistrict	W. Va.	Calhoun	3 31 65	Iss.
CI65-795 United Fuel Gas Co.	Geary	W. Va.	Roane	4 7 65	Iss.
CI65-1028 Consolidated Gas Supply Corp.	Grant District	W. Va.	Ritchie	6 2 65	Iss.
J. A. Heard:					
CI64-1136 United Gas Pipe Line Co.	Quinto Creek*	Tex.	Jim Wells*	1 11 65	Iss.
J. A. Heard, et al.:					
CI64-1146 J. A. Heard	Quinto Creek	Tex.	Jim Wells	1 11 65	Iss.
The Hefner Production Co., Operator, et al.:					
CI65-989 Northern Natural Gas Co.	Beaver Area	Okla.	Beaver	5 21 65	Iss.
Helbing and Podpechan:					
CI60-419 El Paso Natural Gas Co.	Aneth	Utah	San Juan	6 2 65	Iss.
James H. Helland, Operator, et al.:					
CI65-1175 United Gas Pipe Line Co.	South Weesatche	Tex.	Goliad	6 30 65	Iss.
Helmerich & Payne, Inc.:					
CI65-309 Cities Service Gas Co.	Hugoton	Kans.	Haskell	1 25 65	Iss.
Helmerich & Payne, Inc., et al.:					
G-20486 Colorado Interstate Gas Co.	Eubank	Kans.	Haskell	6 10 65	Iss.
Helmerich & Payne, Inc., Operator, et al.:					
G-15519 Colorado Interstate Gas Co.	Hugoton	Kans.	Seward	6 10 65	Iss.
Peterson Henderson Oil Co.:					
CI65-1031 Kansas-Nebraska Natural Gas Co., Inc.	Badwater Area	Wyo.	Fremont	6 14 65	Iss.
CI65-1036 Kansas-Nebraska Natural Gas Co., Inc.	Badwater Area	Wyo.	Fremont*	6 14 65	Iss.
Thomas K. Hendrick, Operator, et al.:					
CI62-281 Michigan Wisconsin Pipe Line Co.	Undesignated	Okla.	Harper	6 10 65	Iss.
CI62-1093 Michigan Wisconsin Pipe Line Co.	Undesignated	Okla.	Harper	6 10 65	Iss.
S. O. Henry, Jr., et al.:					
CI65-824 Arkansas Louisiana Gas Co.	Calhoun	La.	Ouachita	4 13 65	Iss.
James W. Hershberger:					
CI65-996 Michigan Wisconsin Pipe Line Co.	Soden	Kans.	Stafford	5 21 65	Iss.
A. L. Hershey, et al.:					
CI61-758 Michigan Wisconsin Pipe Line Co.	Laverne	Okla.	Harper	6 10 65	Iss.
Roy G. Hildreth:					
CI65-804 Equitable Gas Co.	Glenville	Okla.	Gilmer	4 7 65	Iss.

See footnotes at end of table, p. 1351.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Roy G. Hildreth, Sr., et al.:					
CI65-741 Hope Natural Gas Co.	Spencer District	W. Va	Roane	3 22 65	Iss.
Hill & Wagner, Operator, et al.:					
CI65-27 Almos Gas Gathering Co.	S. W. Yougeen	Tex	Bee	1 11 65	Iss.
Wilbur J. Holleman:					
CI60-827 Michigan Wisconsin Pipe Line Co.	Laverne	Okla	Harper	6 10 65	Iss.
Hondo Oil & Gas Co.:					
CI65-749 El Paso Natural Gas Co.	Basin Dakota	N. Mex	Rio Arriba	3 22 65	Iss.
Horizon Oil & Gas Co. of Texas:					
CI65-228 Baca Gas Gathering System, Inc.	Flank*	Colo	Baca	2 8 65	Iss
Horizon Oil & Gas Co. of Texas, Operator, et al.:					
CI65-229 Baca Gas Gathering System, Inc.	Flank*	Colo	Baca	2 8 65	Iss.
H. H. Howell:					
CI64-1557 Almos Gas Gathering Co.	Linke	Tex	Bee	1 11 65	Iss.
CI65-931 United Gas Pipe Line Co.	Hornbuckle	Tex	Jackson	5 11 65	Iss.
J. M. Huber Corp.:					
CI61-28 Michigan Wisconsin Pipe Line Co.	Undesignated	Okla	Harper*	6 10 65	Iss.
CI61-1448 Michigan Wisconsin Pipe Line Co.	Undesignated	Okla	Harper*	6 10 65	Iss.
CI62-2 Michigan Wisconsin Pipe Line Co.	Undesignated	Okla	Texas	6 10 65	Iss.
CI63-80 Michigan Wisconsin Pipe Line Co.	Undesignated	Okla	Harper	6 10 65	Iss.
CI65-433 Panhandle Eastern Pipe Line Co.	South Teagarden	Okla	Woods	1 5 65	Iss.
CI65-462 Lone Star Gas Co.	Sho-Vel-Tum	Okla	Carter	1 11 65	Iss.
CI65-521 Cities Service Gas Co.	Northeast Waynoka	Okla	Woods	1 19 65	Iss.
CI65-975 Panhandle Eastern Pipe Line Co.	Iris	Kans	Seward	5 21 65	Iss.
CI65-1024 Lone Star Gas Co.	North Dibble	Okla	McClain	6 2 65	Iss.
Humble Oil & Refining Co.:					
CI65-483 The Nueces Co	Belding	Tex	Pecos	1 11 65	Iss.
CI65-618 Arkansas Louisiana Gas Co.	Clinton	Tex	Marion	2 19 65	Iss.
CI65-626 El Paso Natural Gas Co.	Jalmat	N. Mex	Lea	3 2 65	Iss.
CI65-713 South Texas Natural Gas Gathering Co.	Chihuahua	Tex	Hidalgo	3 22 65	Iss.
CI65-725 Cities Service Gas Co.	Waynoka	Okla	Woods	3 22 65	Iss.
CI65-1158 El Paso Natural Gas Co.	Spraberry	Tex	Reagan	6 18 65	Iss.
CI65-1216 Northern Natural Gas Co.	Ozona	Tex	Crockett	6 30 65	Iss.
Hunt Petroleum Corp.:					
CI65-631 Northern Natural Gas Co.	South Six Mile Extension.	Okla	Beaver	3 2 65	Iss.
A. G. Hyden & Jimmie B. Myers:					
CI64-1164 J. A. Heard	Quinto Creek	Tex	Jim Wells	1 11 65	Iss.

See footnotes at end of table, p. 1351.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Hydrocarbon Chemicals, Inc.:					
CI65-620 Cumberland and Allegheny Gas Co.	Washington*	W. Va	Upshur	5 11 65	Iss.
Hydrocarbon Transmission Co., Operator:					
CI64-223 The Altex Corp	North A.S.O.G	Tex	Jim Wells	5 11 65	Iss.
H. L. Ice, Agent:					
CI65-458 Hope Natural Gas Co.	Murphy District	W. Va	Ritchie	1 5 65	Iss.
George Jackson:					
CI65-690 Hope Natural Gas Co.	Glenville District	W. Va	Gilmer	3 2 65	Iss.
Javelin Oil Co., Inc.:					
CI65-232 United Gas Pipe Line Co.	Bethany	Tex	Panola	2 16 65	Iss.
Ira M. Jones, et al., Agent:					
CI65-740 Hope Natural Gas Co.	Grant District	W. Va	Ritchie	3 22 65	Iss.
Josaline Production Co., Operator, et al.:					
CI65-504 Lone Star Gas Co	Sholem Alechem	Okla	Carter	1 19 65	Iss.
Jumbo Oil & Gas, Inc., et al.:					
CI65-544 Hope Natural Gas Co.	Warren District	W. Va	Upshur	1 25 65	Iss.
Katex Oil Co., et al.:					
CI65-836 El Paso Natural Gas Co.	Undesignated	Tex	Collingsworth*	4 13 65	Iss.
Keener Oil Co.:					
CI61-1207 Michigan Wisconsin Pipe Line Co.	Laverne	Okla	Woodward	6 10 65	Iss.
Kerr-McGee Oil Industries, Inc.:					
CI61-36 Panhandle Eastern Pipe Line Co.	Mocane-Laverne	Okla	Beaver	6 10 65	Iss.
CI65-413 Michigan Wisconsin Pipe Line Co.	North Oakdale	Okla	Woods	1 19 65	Iss.
CI65-1030 Baca Gas Gathering System, Inc.	Flank	Colo	Baca	6 2 65	Iss.
CI65-1172 Mountain Fuel Supply Co.	Federal Four Mile Creek Unit.	Colo	Moffat	6 30 65	Iss.
Barron Kidd:					
CI65-913 Natural Gas of West Va. Inc.	Santee	W. Va	Monongalia	5 11 65	Iss.
Radcliffe Killam:					
G-10764 Colorado Interstate Gas Co.	Undesignated	Kans	Stanton	6 10 65	Iss.
W. S. Kilroy, Operator:					
CI63-434 Colorado Interstate Gas Co.	Table Rock	Wyo	Sweetwater	3 25 65	Iss.
F. R. Kincaid:					
CI65-573 Equitable Gas Co.	Murphy District	W. Va	Ritchie	2 8 65	Iss.
King-Stevenson Gas & Oil Co.:					
CI65-555 Arkansas Louisiana Gas Co.	Starr	Okla	Kingfisher	2 8 65	Iss.

See footnotes at end of table, p. 1351.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Kingwood Oil Co.:					
CI60-744 Michigan Wisconsin Pipe Line Co.	Laverne	Okla.	Beaver	6 10 65	Iss.
CI61-267 El Paso Natural Gas Co.	Ridgeway	Okla.	Beaver	3 15 65	Iss.
Kirby Petroleum Co.:					
CI61-30 Michigan Wisconsin Pipe Line Co.	N.E. Doby Springs.	Okla.	Harper	6 10 65	Iss.
CI62-6 Cimarron Transmission Co.	Enville	Okla.	Love	6 10 65	Iss.
Kirby Royalties, Inc., Operator, et al.:					
CI65-1217 Mountain Fuel Supply Co.	West Side Canal Unit.	Wyo.	Carbon	6 30 65	Iss.
Lab Oil Co., Operator, et al.:					
CI64-38 Hydrocarbon Transmission Co.	North A.S.O.G.	Tex.	Jim Wells	5 11 65	Iss.
CI64-1125 United Gas Pipe Line Co.	Paul White	Tex.	Jim Wells	1 11 65	Iss.
CI65-507 United Gas Pipe Line Co.	Blanconia	Tex.	Bee	1 25 65	Iss.
R. W. Lange:					
CI65-559 Colorado Interstate Gas Co.	Hugoton	Kans.	Finney	3 2 65	Iss.
Lario Oil & Gas Co.:					
CI61-37 Colorado Interstate Gas Co.	Adams Ranch	Kans.	Meade	6 10 65	Iss.
Larue-Smith Production Co.:					
CI64-1319 United Gas Pipe Line Co.	Pistol Ridge	Miss.	Forrest	5 21 65	Iss.
Lawrence Drilling Co.:					
CI65-617 Texas Eastern Transmission Corp.	Spider	La.	De Soto Parish	2 19 65	Iss.
Ralph L. Leaderbrand:					
CI61-1709 Northern Natural Gas Co.	South Finch Pool	Okla.	Meade	6 10 65	Iss.
J. M. Leonard:					
G-19426 Michigan Wisconsin Pipe Line Co.	Laverne	Okla.	Harper	6 10 65	Iss.
O. P. Leonard and The Fort Worth Nat'l Bank Trustee:					
CI65-1171 El Paso Natural Gas Co.	Ignacio-Blanco	Colo.	La Plata	6 28 65	Iss.
Paul D. Little, Operator, et al.:					
CI64-1455 Almos Gas Gathering Co.	Linke	Tex.	Bee	1 11 65	Iss.
H. B. Lively, Operator, et al.:					
CI62-1220 Tennessee Gas Transmission Co.	Columbus	Tex.	Colorado	1 8 65	Iss.
MacDonald Oil Corp:					
CI65-747 Northern Natural Gas Co.	Undesignated	Tex.	Crockett	3 31 65	Iss.
MacTay Investment Co., Inc., et al.:					
CI65-538 Hope Natural Gas Co.	Skin Creek District.	W. Va.	Lewis	1 25 65	Iss.
W. C. McBride, Inc., et al.:					
CI61-1596 El Paso Natural Gas Co.	Parsell	Tex.	Roberts	3 22 65	Iss.

See footnotes at end of table, p. 1351.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
McCall Drilling Co. Inc.:					
CI65-456 Hope Natural Gas Co.	Sherman District	W. Va.	Calhoun	1 5 65	Iss.
J. Sterling McCluskey, Operator, et al.:					
CI65-388 Lake Shore Pipe Line Co.	Bushnell	Pa.	Erie	1 5 65	Iss.
J. E. Mabee Co.:					
G-18045 Michigan Wisconsin Pipe Line Co.	Laverne	Okla.	Harper	6 10 65	Iss.
Mabee Royalties, Inc.:					
G-18044 Michigan Wisconsin Pipe Line Co.	Laverne	Okla.	Harper	6 10 65	Iss.
Russell L. Maguire, et al.:					
CI61-159 Natural Gas Pipeline Co. of America.	Undesignated	Tex.	Jack	6 10 65	Iss.
Russell Maguire, Operator, et al.:					
G-19837 Colorado Interstate Gas Co.	Undesignated	Okla.	Beaver	6 10 65	Iss.
Vernon J. Main, Jr.:					
CI66-238 Bluebonnet Gas Corp.	Lottie-Bayou White.	La.	Pointe Coupee	1 4 65	Iss.
Marathon Oil Co.:					
CI65-733 Arkansas Louisiana Gas Co.	Lacy	Okla.	Kingfisher	4 7 65	Iss.
William Bartlett Marshall:					
CI62-228 Michigan Wisconsin Pipe Line Co.	Undesignated	Okla.	Harper	6 10 65	Iss.
Mayflo Oil Co.:					
CI62-871 Michigan Wisconsin Pipe Line Co.	Mocane Laverne	Okla.	Harper	6 10 65	Iss.
Mayflo Oil Co., Operator:					
CI61-538 Transwestern Pipeline Co.	North Como	Okla.	Beaver	6 10 65	Iss.
CI61-1417 Michigan Wisconsin Pipe Line Co.	Mocane Area	Okla.	Beaver	6 10 65	Iss.
James G. Maynard d/b/a Maynard Oil Co.:					
CI63-1337 Natural Gas Pipeline Co. of America.	Undesignated	Tex.	Jack*	6 10 65	Iss.
Maytex Gas Co., Operator:					
CI65-956 Southern Natural Gas Co.	Quitman Bayou	Miss.	Adams*	5 12 65	Iss.
Cecil Meadows, et al.:					
CI65-830 Pennzoil Co.	Cove District	W. Va.	Doddridge	4 13 65	Iss.
Joe D. Mechalke, et al.:					
CI65-966 Kansas-Nebraska Natural Gas Co., Inc.	South Stoneham	Colo.	Weld	5 12 65	Iss.
William H. Meissner:					
CI62-572 Michigan Wisconsin Pipe Line Co.	Undesignated	Okla.	Harper	6 10 65	Iss.
Edwin C. Meredith, Agent:					
CI65-448 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	1 5 65	Iss.
Ward S. Merrick, Jr., et al.:					
CI61-1770 Cimarron Transmission Co.	Sadler Unit	Okla.	Love	6 10 65	Iss.

See footnotes at end of table, p. 1351.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Mesa Petroleum Co., Operator, et al.:					
CI65-991 Natural Gas Pipeline Co. of America.	West Panhandle	Tex	Carson	5 21 65	Iss.
Calvin Michelson, Operator, et al.:					
CI64-1373 Almos Gas Gathering Co.	Seeley	Tex	Bee	1 11 65	Iss.
Midwest Oil Corp.:					
G-19526 Michigan Wisconsin Pipe Line Co.	Undesignated	Okla	Harper	6 10 65	Iss.
CI62-571 Cimarron Transmission Co.	Enville*	Okla	Love	6 10 65	Iss.
CI65-722 El Paso Natural Gas Co.	Custer Mountain Unit.	N. Mex	Lea	3 31 65	Iss.
CI65-750 Arkansas Louisiana Gas Co.	Wilburton	Okla	Latimer*	3 22 65	Iss.
Miles Kimball Co.:					
CI65-811 United Gas Pipe Line Co.	Monroe Gas	La	Morehouse	4 13 65	Iss.
Mill Creek & Oil Co.:					
CI65-703 Pennsylvania Gas Co.	Barnes	Pa	Warren	6 28 65	Iss.
Miller & Fox Minerals Corp.:					
CI65-947 J. A. Heard d/b/a Heard Oil & Gas.	Quinto Creek	Tex	Jim Wells	6 2 65	Iss.
Miller & Fox Minerals Corp., Operator, et al.:					
CI64-219 HydrocarbonTransmission Co.	North A.S.O.G	Tex	Jim Wells	4 13 65	Iss.
CI65-742 J. A. Heard d/b/a Heard Oil & Gas.	Quinto Creek	Tex	Jim Wells	4 13 65	Iss.
Minerals Ventures Corp.:					
G-16460 Colorado Interstate Gas Co.	Mocane	Okla	Beaver	6 10 65	Iss.
Mississippi River Fuel Corp.:					
G-7376 Tennessee Gas Transmission Co.*	Placedo*	Tex	Victoria	1 12 65	Iss.
Monroe Gas System, Inc., Agent and Operator, et al.:					
CI65-744 Southern Natural Gas Co.	Monroe	La	Morehouse*	3 31 65	Iss.
Monsanto Co.:					
CI61-713 Transwestern Pipeline Co.	Undesignated	Tex	Ochiltree	6 10 65	Iss.
CI61-1777 Northern Natural Gas Co.	Barby Unit	Okla	Beaver	6 10 65	Iss.
CI65-225 Baca Gas Gathering System, Inc.	Flank	Colo	Baca	2 8 65	Iss.
William V. Montin:					
CI65-735 El Paso Natural Gas Co.	Basin Dakota	N. Mex	San Juan	5 11 65	Iss.
W. L. Moody, III:					
CI64-1190 J. A. Heard	Quinto Creek	Tex	Jim Wells	1 11 65	Iss.
CI64-1191 J. A. Heard	Quinto Creek	Tex	Jim Wells	1 11 65	Iss.
CI65-650 Texas Eastern Transmission Corp.	Mercedes	Tex	Hidalgo	3 2 65	Iss.

See footnotes at end of table, p. 1351.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Kenneth B. Moore:					
CI60-321 Colorado Interstate Gas Co.	West Stockholm	Okla	Harper	6 10 65	Iss.
M. J. Moran, Agent:					
CI65-532 Hope Natural Gas Co.	Glenville District	W. Va	Gilmer	1 25 65	Iss.
CI65-953 Consolidated Gas Supply Corp.	Glenville District	W. Va	Gilmer	5 12 65	Iss.
C. L. Morris, et al.:					
CI65-1026 Arkansas Louisiana Gas Co.	Mooringsport	La	Caddo	6 2 65	Iss.
Graham B. Morrison & Glen W. Pryor, Trustees:					
G-18884 El Paso Natural Gas Co.	Hogsback	Wyo	Sublette	3 25 65	Iss.
George Moses:					
CI65-901 Consolidated Gas Supply Corp.	Sherman*	W. Va	Calhoun*	5 11 65	Iss.
CI65-982 Equitable Gas Co	West Union District.*	W. Va	Doddridge	5 21 65	Iss.
H. J. Mosser:					
CI64-68 The Altex Corp	Tom Graham	Tex	Jim Wells	5 21 65	Iss.
H. J. Mosser, Operator:					
CI63-1110 The Altex Corp	Tom Graham	Tex	Jim Wells	6 18 65	Iss.
Nabob Production Co., Operator, et al.:					
CI65-535 Northern Natural Gas Co.	Collier Gas	Tex	Hansford	1 25 65	Iss.
National Cooperative Refinery Association:					
CI62-1441 Michigan Wisconsin Pipe Line Co.	Undesignated	Okla	Harper	6 10 65	Iss.
Ne-O-Tex Corp.:					
CI65-486 El Paso Natural Gas Co.	Spraberry Trend Area.	Tex	Glasscock	4 22 65	Iss.
CI65-864 El Paso Natural Gas Co.	Spraberry Trend Area.	Tex	Glasscock	6 2 65	Iss.
CI65-957 El Paso Natural Gas Co.	Spraberry Trend Area.	Tex	Reagan	6 2 65	Iss.
New Era Royalties:					
G-19960 Colorado Interstate Gas Co.	Greenwood	Kans	Norton	6 10 65	Iss.
Nor-Mac-Burns Co.:					
G-15521 Colorado Interstate Gas Co.	Keyes	Okla	Cimarron	6 10 65	Iss.
Norris Engineering Management Corp., Operator, et al.:					
CI63-71 Michigan Wisconsin Pipe Line Co.	Undesignated	Okla	Harper	6 10 65	Iss.
Northern Natural Gas Producing Co.:					
CI64-860 Southern Union Gathering Co.	Basin Dakota	N. Mex	San Juan*	6 14 65	Iss.
Northern Pump Co., Operator, et al.:					
CI65-480 Texas Eastern Transmission Corp.	Yoward	Tex	Bee	1 25 65	Iss.

See footnotes at end of table, p. 1351.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
E. A. Obering, Operator:					
G-19616 Michigan Wisconsin Pipe Line Co.	Laverne	Okla	Harper	6 10 65	Iss.
Ocean Drilling & Exploration Co., Operator, et al.:					
CI65-474 Transcontinental Gas Pipe Line Corp.	West Half of Block 12.	La	South Pelto Area	2 19 65	Iss.
Oil and Gas Property Management, Inc.:					
CI65-169 Florida Gas Transmission Co.	Placios	Tex	Matagorda	2 19 65	Iss.
CI65-699 United Gas Pipe Line Co.	Iberia	La	Iberia	3 15 65	Iss.
CI65-885 Tennessee Gas Transmission Co.	Cleveland*	Tex	Liberty*	4 22 65	Iss.
CI65-886 Tennessee Gas Transmission Co.	Blue Basin*	Tex	Wharton	4 22 65	Iss.
Oil and Gas Property Management, Inc., Operator, et al.:					
CI65-925 Panhandle Eastern Pipe Line Co.	Undesignated	Kans	Kiowa	5 11 65	Iss.
Oil and Gas Ventures, Inc.:					
CI61-805 Transwestern Pipeline Co.	Undesignated	Okla	Beaver	6 10 65	Iss.
Oklahoma Natural Gas Co.:					
CI60-190 Northern Natural Gas Co.	Six Mile*	Okla	Beaver	6 10 65	Iss.
CI61-260 Panhandle Eastern Pipe Line Co.	Glenwood	Okla	Beaver	6 10 65	Iss.
CI61-698 Panhandle Eastern Pipe Line Co.	Glenwood	Okla	Beaver	6 10 65	Iss.
CI63-567 Michigan Wisconsin Pipe Line Co.	Laverne	Okla	Harper	6 10 65	Iss.
Ozark-Mahoning Co.:					
CI60-584 Colorado Interstate Gas Co.	Mocane	Okla	Beaver	6 10 65	Iss.
CI60-711 Panhandle Eastern Pipe Line Co.	Undesignated	Okla	Beaver*	6 10 65	Iss.
CI60-712 Northern Natural Gas Co.	D. E. Wolf Unit	Okla	Beaver	6 10 65	Iss.
Palm Petroleum Corp., Operator, et al.:					
CI65-585 Kansas-Nebraska Natural Gas Co., Inc.	Camrick	Okla	Texas	2 19 65	Iss.
Pan American Petroleum Corp.:					
G-12325 Panhandle Eastern Pipe Line Co.	Greenwood	Kans	Morton	6 10 65	Iss.
CI60-722 Panhandle Eastern Pipe Line Co.	Mocane Gas Area	Okla	Beaver	6 10 65	Iss.
CI61-19 Colorado Interstate Gas Co.	Laverne	Okla	Harper	6 10 65	Iss.
CI61-228 Michigan Wisconsin Pipe Line Co.	Laverne	Okla	Harper*	6 10 65	Iss.
CI63-269 Michigan Wisconsin Pipe Line Co.	Laverne	Okla	Harper	6 10 65	Iss.
CI65-411 El Paso Natural Gas Co.	Payton	Tex	Pecos	1 11 65	Iss.

See footnotes at end of table, p. 1351.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Pan American Petroleum Corp.—Continued					
CI65-661 Michigan Wisconsin Pipe Line Co.	Laverne	Okla.	Harper	3 22 65	Iss.
CI65-726 Natural Gas Pipeline Co. of America.	Mobeetie	Tex.	Wheeler	3 22 65	Iss.
CI65-777 Transwestern Pipeline Co.	Mocane Gas Area	Okla.	Beaver	3 31 65	Iss.
CI65-847 Michigan Wisconsin Pipe Line Co.	Woodward Area	Okla.	Woodward*	5 12 65	Iss.
CI65-1027 Mountain Fuel Supply Co.	West Side Canal	Wyo.	Carbon	6 2 65	Iss.
CI65-1047 Northern Natural Gas Co.	Northwest Lemon	Kans.	Haskell	6 14 65	Iss.
Pan American Petroleum Corp., et al.:					
G-18435 Michigan Wisconsin Pipe Line Co.	Laverne	Okla.	Harper	6 10 65	Iss.
Pan American Petroleum Corp., Operator, et al.:					
CI65-1025 Mountain Fuel Supply Co.	Four Mile Creek	Colo.	Moffat	6 30 65	Iss.
Parker & Parsley, et al.:					
CI65-520 El Paso Natural Gas Co.	Spraberry	Tex.	Upton	3 15 65	Iss.
E. J. Pearl, Operator, et al.:					
CI64-1448 Almos Gas Gathering Co.	Seeley	Tex.	Bee	1 11 65	Iss.
John M. Peel d/b/a Richardo Oil & Gas Co.:					
CI64-1163 J. A. Heard d/b/a Heard Oil & Gas	Fort Lipan	Tex.	Neuces	1 19 65	Wtd.
Charles C. Peppers:					
G-18332 Michigan Wisconsin Pipe Line Co.	Laverne	Okla.	Harper	6 10 65	Iss.
Petroleum Exploration, Inc., of Texas, et al.:					
CI61-272 Colorado Interstate Gas Co.	Undesignated	Kans.	Morton	6 10 65	Iss.
Petroleum Exploration, Inc., of Texas, Operator, et al.:					
CI65-685 Panhandle Eastern Pipe Line Co.	Oakdale	Okla.	Woods	3 2 65	Iss.
Petroleum, Inc.:					
CI60-214 Michigan Wisconsin Pipe Line Co.	Laverne	Okla.	Beaver	6 10 65	Iss.
CI60-301 Colorado Interstate Gas Co.	Southwest Camp Creed.	Okla.	Beaver	6 10 65	Iss.
CI61-1453 Panhandle Eastern Pipe Line Co.	Mocane	Okla.	Beaver	6 10 65	Iss.
Petroleum, Inc., et al.:					
CI62-548 Panhandle Eastern Pipe Line Co.	Undesignated	Okla.	Texas	6 10 65	Iss.
Petroleum, Inc., Operator, et al.:					
CI65-529 Northern Natural Gas Co.	Mocane	Okla.	Beaver	1 25 65	Iss.
CI65-944 Northern Natural Gas Co.	Como Southeast	Okla.	Beaver	5 12 65	Iss.
CI65-988 Northern Natural Gas Co.	Sitka	Kans.	Clark	5 21 65	Iss.

See footnotes at end of table, p. 1351.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Petroleum Promotions, Inc.:					
CI65-1029 Consolidated Gas Supply Corp.	Court House District.	W. Va.	Lewis	6 2 65	Iss.
Petroleum Promotions, Inc., et al.:					
CI65-526 Hope Natural Gas Co.	Collins Settlement District.	W. Va.	Lewis	1 19 65	Iss.
Petroleum Resources, Inc., et al.:					
CI65-960 Consolidated Gas Supply Corp.	Collins Settlement District.	W. Va.	Lewis	5 12 65	Iss.
C. Howard Phifer, Operator:					
CI65-508 Tennessee Gas Transmission Co.	Cecil Noble	Tex.	Colorado	1 19 65	Iss.
Phillips Petroleum Co.:					
G-18523 Michigan Wisconsin Pipe Line Co.	Laverne	Okla.	Harper	6 10 65	Iss.
CI60-144 Northern Natural Gas Co.	#1 Kirkhart Well	Okla.	Harper	6 10 65	Iss.
CI60-197 Colorado Interstate Gas Co.	Undesignated	Okla.	Beaver	6 10 65	Iss.
CI60-384 Northern Natural Gas Co.	Undesignated	Okla.	Beaver	6 10 65	Iss.
CI61-1629 Colorado Interstate Gas Co.	Adams H Lease	Kans.	Meade	6 10 65	Iss.
CI65-440 Hope Natural Gas Co.	Burns Chapel Unit*	W. Va.	Monongalia*	1 5 65	Iss.
CI65-602 Panhandle Eastern Pipe Line Co.	Northeast Seiling	Okla.	Major	3 31 65	Iss.
Phillips Petroleum Co., Operator:					
CI65-624 El Paso Natural Gas Co.	Ector Plant	Tex.	Ector	2 19 65	Iss.
Pioneer Petroleum, Inc., et al.:					
CI65-871 Hope Natural Gas Co.	Union District	W. Va.	Harrison	4 22 65	Iss.
Pioneer Production Corp.:					
G-18476 Michigan Wisconsin Pipe Line Co.	Undesignated	Okla.	Beaver	6 10 66	Iss.
Production Consultants Co., Operator, et al.:					
CI65-607 Panhandle Eastern Pipe Line Co.	Valley Center	Okla.	Dewey	2 16 65	Iss.
The Pure Oil Co., Operator, et al.:					
CI61-1252 Michigan Wisconsin Pipe Line Co.	Lovedale*	Okla.	Harper	6 10 65	Iss.
Quaker State Oil Refining Corp.:					
CI65-791 Hope Natural Gas Co.	Glenville District	W. Va.	Gilmer	3 31 65	Iss.
Homer Queen, Agent:					
CI65-717 Hope Natural Gas Co.	Elk District	W. Va.	Harrison	3 22 65	Iss.
Ramsey Associated Petroleum, Ltd.:					
CI65-904 Consolidated Gas Supply Corp.	Glenville*	W. Va.	Gilmer*	5 11 65	Iss.
Reliance Oil Corp.:					
CI65-1038 Pennzoil Co.	Duval District	W. Va.	Lincoln	6 2 65	Iss.

See footnotes at end of table, p. 1351.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Remlig Oil Co.:					
G-19688 Colorado Interstate Gas Co.	Undesignated	Okla.	Beaver	6 10 65	Iss.
E. M. Reynolds d/b/a Madison Gas Co.:					
CI65-873 Hope Natural Gas Co.	Ripley District	W. Va.	Jackson	4 22 65	Iss.
Riddell Petroleum Corp.:					
CI60-667 Michigan Wisconsin Pipe Line Co.	Laverne	Okla.	Harper	6 10 65	Iss.
Riffe Petroleum Co.:					
CI61-198 Panhandle Eastern Pipe Line Co.	Bluebell	Kans.	Seward	6 10 65	Iss.
Rincon Oil & Gas Corp.:					
CI65-430 El Paso Natural Gas Co.	Pictured Cliffs	N. Mex.	Rio Arriba	2 16 65	Iss.
CI65-542 El Paso Natural Gas Co.	Pictured Cliffs*	N. Mex.	Rio Arriba	1 25 65	Iss.
CI65-970 El Paso Natural Gas Co.	Dakota	N. Mex.	Rio Arriba	5 21 65	Iss.
R. P. Robinson:					
CI65-550 Equitable Gas Co.	Troy District	W. Va.	Gilmer	2 8 65	Iss.
L. W. Roche, et al.:					
CI65-964 United Fuel Gas Co.	Walton District	W. Va.	Roane	5 12 65	Iss.
CI65-965 United Fuel Gas Co.	Walton District	W. Va.	Roane	5 12 65	Iss.
Rodman Oil Co.:					
CI65-460 El Paso Natural Gas Co.	Spraberry Trend Area.	Tex.	Upton	3 2 65	Iss.
Rohde, Henderson & Dawson:					
CI64-1393 Phillips Petroleum Co.	Panhandle	Tex.	Gray	1 5 65	Iss.
Dale H. Rowden:					
CI64-1222 United Gas Pipe Line Co.	West Rosalia	Tex.	Duval	1 11 65	Iss.
W. Earl Rowe, Operator, et al.:					
CI64-1368 The Algas Co.	Embleton	Tex.	Jim Wells	1 11 65	Iss.
CI64-1538 The Algas Co.	Rowe	Tex.	Jim Wells	1 11 65	Iss.
Neal Rudder, et al.:					
CI65-567 Equitable Gas Co.	Central District	W. Va.	Doddridge	2 8 65	Iss.
CI65-673 Hope Natural Gas Co.	Webb Lease	W. Va.	Doddridge	3 2 65	Iss.
CI65-868 Hope Natural Gas Co.	Central District	W. Va.	Doddridge	4 22 65	Iss.
Rutter and Co. Ltd., et al.:					
CI65-444 El Paso Natural Gas Co.	Spraberry Trend	Tex.	Glasscock	5 11 65	Iss.
CI65-887 El Paso Natural Gas Co.	Spraberry Trend Area.	Tex.	Glasscock	4 22 65	Iss.
CI65-1011 El Paso Natural Gas Co.	Spraberry Trend Area.	Tex.	Glasscock	6 2 65	Iss.
Rutter & Wilbanks Corp.:					
CI65-446 El Paso Natural Gas Co.	Spraberry Trend	Tex.	Upton	1 5 65	Iss.
Samedan Oil Corp.:					
CI62-811 Cimarron Transmission Co.	Enville	Okla.	Love	6 10 65	Iss.
Samedan Oil Corp., Operator, et al.:					
CI65-926 Natural Gas Pipeline Co. of America.	Hugoton	Okla.	Texas	5 11 65	Iss.

See footnotes at end of table, p. 1351.

NEW SERVICE CERTIFICATES—Continued

PRODUCER, DOCKET NO., AND PURCHASER	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Caroline Hunt Sands, et al.:					
CI61-224 Michigan Wisconsin Pipe Line Co.	Undesignated	Okla.	Harper*	6 10 65	Iss.
John T. Sanford:					
CI65-565 Cities Service Gas Co.	S. Hominy	Okla.	Osage	2 8 65	Iss.
Sarkeys, Inc.:					
CI65-801 Michigan Wisconsin Pipe Line Co.	Woodward Area	Okla.	Major	4 15 65	Iss.
James F. Scott, Agent:					
CI65-445 Hope Natural Gas Co.	McClellan District	W. Va.	Doddridge	1 5 65	Iss.
Paul P. Scott Trust, et al.:					
CI65-42 El Paso Natural Gas Co.	Jalmat	N. Mex.	Lea	3 22 65	Iss.
Joseph E. Seagram & Sons, Inc.:					
CI65-490 El Paso Natural Gas Co.	Payton	Tex.	Pecos	1 19 65	Iss.
Hughes Seewald, et al.:					
CI61-14 Colorado Interstate Gas Co.	Keyes	Okla.	Cimarron	6 10 65	Iss.
Shamrock Oil and Gas Corp.:					
CI60-766 Panhandle Eastern Pipe Line Co.	Undesignated	Kans.	Meade	6 10 65	Iss.
Shell Oil Co.:					
CI62-903 Michigan Wisconsin Pipe Line Co.	Selman-Morris Unit	Okla.	Woodward	6 10 65	Iss.
CI62-1534 El Paso Natural Gas Co.	Mocane	Okla.	Beaver	1 5 65	Iss.
CI62-1536 Colorado Interstate Gas Co.	Mocane	Okla.	Beaver	6 10 65	Iss.
CI63-111 Panhandle Eastern Pipe Line Co.	Forgan	Okla.	Beaver	6 10 65	Iss.
CI63-267 Colorado Interstate Gas Co.	Laverne	Okla.	Harper	6 10 65	Iss.
CI63-272 Colorado Interstate Gas Co.	Laverne	Okla.	Harper	6 10 65	Iss.
CI65-516 Northern Natural Gas Co.	Denison	Tex.	Sutton	1 19 65	Iss.
CI65-739 American Louisiana Pipe Line Co.	Kings Bayou	La.	Cameron	5 11 65	Iss.
CI65-940 Consolidated Gas Supply Corp.	Somerset	Pa.	Somerset	5 12 65	Iss.
CI65-1008 Panhandle Eastern Pipe Line Co.	N. W. Oakdale	Okla.	Woods	6 30 65	Iss.
Shell Oil Co., et al.:					
G-14979 Northern Natural Gas Co.	Rosston	Okla.	Beaver	6 10 65	Iss.
Sierra Petroleum Co., Inc.:					
CI65-823 Panhandle Eastern Pipe Line Co.	Cedar	Kans.	Barber	1 19 65	Iss.
D. J. Simmons, et al.:					
CI65-318 United Gas Pipe Line Co.	Monroe Gas	La.	Ouachita	1 5 65	Iss.
Sinclair Oil & Gas Co.:					
CI61-1032 Michigan Wisconsin Pipe Line Co.	Undesignated	Okla.	Harper	6 10 65	Iss.
CI62-1070 Colorado Interstate Gas Co.	Mocane	Okla.	Beaver	6 10 65	Iss.
CI65-461 El Paso Natural Gas Co.	Basin-Dakota	N. Mex.	San Juan	1 11 65	Iss.

See footnotes at end of table, p. 1351.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[2] DOCKET NO., AND PURCHASER[2]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Sinclair Oil & Gas Co., et al.:					
CI65-1035 Northern Natural Gas Co.	Balco	Okla.	Beaver	6 2 65	Iss.
Sinclair Oil & Gas Co., Operator, et al.:					
CI65-1174 Lone Star Gas Co.	Undesignated	Okla.	Stephens	6 28 65	Iss.
Skelly Oil Co.:					
CI60-602 Panhandle Eastern Pipe Line Co.	Mocane	Okla.	Beaver	6 10 65	Iss.
CI65-276 Baca Gas Gathering System, Inc.	Cogburn	Colo.	Baca	2 8 65	Iss.
CI65-454 Panhandle Eastern Pipe Line Co.	Undesignated	Kans.	Seward	1 5 65	Iss.
CI65-604 West Texas Gathering Co.	South Halley	Tex.	Winkler	3 2 65	Iss.
CI65-638 Northern Natural Gas Co.	Undesignated	Tex.	Ochiltree	3 2 65	Iss.
CI65-853 El Paso Natural Gas Co.	Custer Mountain Unit.	N. Mex.	Lea	4 15 65	Iss.
Sklar Producing Co. Inc.:					
CI65-1017 Bluebonnet Gas Corp.	South Bayou Mallet.	La.	Acadia	6 14 65	Iss.
CI65-1044 Tennessee Gas Transmission Co.	Bell City	La.	Calcasieu	6 14 65	Iss.
E. D. Smith:					
CI65-110 Lone Star Gas Co.	East Durant	Okla.	Bryan	3 15 65	Iss.
Jas. F. Smith, Operator, et al.:					
CI62-1559 Northern Natural Gas Co.	Mocane-Laverne-Morrow.	Okla.	Beaver	6 10 65	Iss.
CI63-668 Michigan Wisconsin Pipe Line Co.	Laverne	Okla.	Beaver	6 10 65	Iss.
CI63-723 Northern Natural Gas Co.	Laverne	Okla.	Beaver	6 10 65	Iss.
W. T. Smith:					
CI62-1228 Panhandle Eastern Pipe Line Co.	Mocane	Okla.	Beaver	6 10 65	Iss.
Socony Mobil Oil Co., Inc.:					
G-17777 Colorado Interstate Gas Co.	Greenwood	Kans.	Morton	6 10 65	Iss.
CI61-271 Panhandle Eastern Pipe Line Co.	Mocane	Okla.	Beaver	6 10 65	Iss.
CI62-603 Michigan Wisconsin Pipe Line Co.	Laverne	Okla.	Beaver	6 10 65	Iss.
CI62-998 Colorado Interstate Gas Co.	Mocane	Okla.	Beaver	6 10 65	Iss.
CI65-85 El Paso Natural Gas Co.	Hogsback Unit	Wyo.	Sublette	1 5 65	Iss.
CI65-505 Panhandle Eastern Pipe Line Co.	Postle Hough	Okla.	Texas	1 19 65	Iss.
CI65-536 El Paso Natural Gas Co.	Basin Dakota	N. Mex.	San Juan	1 25 65	Iss.
CI65-553 El Paso Natural Gas Co.	Tip Top Unit	Wyo.	Sublette	2 8 65	Iss.
CI65-781 Cities Service Gas Co.	N. W. Lovedale	Okla.	Harper	3 31 65	Iss.
Sohio Petroleum Co.:					
G-19421 Northern Natural Gas Co.	Undesignated	Okla.	Beaver	6 10 65	Iss.
G-20101 Colorado Interstate Gas Co.	Keyes	Okla.	Undesignated	6 10 65	Iss.

See footnotes at end of table, p. 1351.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[2] DOCKET NO., AND PURCHASER[3]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Sohio Petroleum Co.—Continued					
CI65-662 Colorado Interstate Gas Co.	Panhandle	Tex	Hutchinson	3 31 65	Iss.
CI65-663 Phillips Petroleum Co.	Panhandle	Tex	Moore	3 31 65	Iss.
CI65-664 Colorado Interstate Gas Co.	West Panhandle	Tex	Moore*	3 31 65	Iss.
CI65-665 Panhandle Producing Co., et al.	Panhandle	Tex	Hutchinson	3 31 65	Iss.
CI65-666 Phillips Petroleum Co.	Panhandle	Tex	Sherman	3 31 65	Iss.
CI65-667 Panhandle Producing Co.	West Panhandle	Tex	Hutchinson	3 31 65	Iss.
CI65-684 Michigan Wisconsin Pipe Line Co.	Putnam	Okla	Dewey	3 2 65	Iss.
Sohio Petroleum Co., Operator, et al.:					
G-17791 Michigan Wisconsin Pipe Line Co.	Laverne	Okla	Harper	6 10 65	Iss.
CI65-802 Hope Natural Gas Co.	West Gueydan	La	Vermilion	4 13 65	Iss.
Ray D. Sorrells, Operator, et al.:					
CI64-1441 Almos Gas Gathering Co.	Linke	Tex	Bee	1 11 65	Iss.
Southern Union Production Co.:					
CI65-767 El Paso Natural Gas Co.	Mesa Verde Formation.	N. Mex	San Juan	4 13 65	Iss.
CI65-846 El Paso Natural Gas Co.	Mesa Verde Formation.	Colo	La Plata	4 22 65	Iss.
Southland Drilling Co., Operator, et al.:					
CI65-737 Texas Eastern Transmission Corp.	Ocker	Tex	Arkansas*	3 22 65	Iss.
Spartan Gas Co.:					
CI65-562 United Fuel Gas Co.	Malden District	W. Va	Kanawha	2 8 65	Iss.
CI65-563 United Fuel Gas Co.	Poca District	W. Va	Kanawha	2 8 65	Iss.
CI65-880 United Fuel Gas Co.	Malden District	W. Va	Kanawha	4 22 65	Iss.
Sydney Spofforth:					
CI65-491 Hope Natural Gas Co.	Grant District	W. Va	Ritchie	1 19 65	Iss.
Sydney Spofforth, Operator, et al.:					
CI65-640 Hope Natural Gas Co.	Grant District	W. Va	Ritchie	3 2 65	Iss.
Hugh N. Spohn:					
CI62-721 Michigan Wisconsin Pipe Line Co.	Laverne	Okla	Harper	6 10 65	Iss.
Standard Oil Co. of Texas, a Division of California Oil Co.:					
CI62-592 Cimarron Transmission Co.	Enville*	Okla	Love	6 10 65	Iss.
CI62-765 Cimarron Transmission Co.	Enville*	Okla	Love	6 10 65	Iss.
CI65-709 Natural Gas Pipeline Co. of America.	Mobeetie Area	Tex	Wheeler	3 15 65	Iss.
CI65-1013 Natural Gas Pipeline Co. of America.	Sesita Yegua	Tex	Duval	6 2 65	Iss.

See footnotes at end of table, p. 1351.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[2] DOCKET NO., AND PURCHASER[3]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Harvey L. Starr:					
CI65-816 Equitable Gas Co.	Central District	W. Va.	Doddridge	4 13 65	Iss.
Harvey L. Starr, et al.:					
CI65-672 Hope Natural Gas Co.	Lee District	W. Va.	Calhoun	3 2 65	Iss.
Paul F. Starr, Agent:					
CI65-451 Hope Natural Gas Co.	Spencer District	W. Va.	Roane	1 5 65	Iss.
CI65-952 Consolidated Gas Supply Corp.	Spencer District	W. Va.	Roane	5 12 65	Iss.
CI65-963 United Fuel Gas Co.	Geary District*	W. Va.	Roane*	5 12 65	Iss.
Statex Petroleum, Operator, et al.:					
CI61-302 Michigan Wisconsin Pipe Line Co.	Laverne	Okla.	Harper	6 10 65	Iss.
CI61-512 Michigan Wisconsin Pipe Line Co.	Laverne	Okla.	Beaver	6 10 65	Iss.
Walter Stegmeir, et al.:					
CI65-1173 Cumberland Natural Gas Co.	Nortonville	Ky.	Hopkins	6 28 65	Iss.
D. W. Stiles, et al.:					
CI65-572 El Paso Natural Gas Co.	Pictured Cliffs	N. Mex.	San Juan	3 22 65	Iss.
Floyd W. Stone, et al.:					
CI65-680 Hope Natural Gas Co.	New Milton District.	W. Va.	Doddridge	3 2 65	Iss.
Stonestreet Lands Co., et al.:					
CI65-715 Hope Natural Gas Co.	Dekalb District	W. Va.	Gilmer	3 22 65	Iss.
Sun Oil Co.:					
CI60-269 Colorado Interstate Gas Co.	Kansas-Adams Ranch.	Kans.	Meade	6 10 65	Iss.
CI61-738 Natural Gas Pipeline Co. of America.	Southeast Woodward.	Okla.	Woodward	6 10 65	Iss.
CI61-992 Michigan Wisconsin Pipe Line Co.	Laverne Area	Okla.	Harper	6 10 65	Iss.
CI62-1111 Michigan Wisconsin Pipe Line Co.	Laverne	Okla.	Harper	6 10 65	Iss.
CI65-353 El Paso Natural Gas Co.	Payton	Tex.	Pecos	1 5 65	Iss.
CI65-592 Lone Star Gas Co.	North Dibble	Okla.	McClain	2 16 65	Iss.
CI65-621 United Gas Pipe Line Co.	Deer Island	La.	Terrebonne	2 19 65	Iss.
CI65-622 Texas Eastern Transmission Corp.	Bayside	Tex.	Refugio	2 19 65	Iss.
Sunac Petroleum Corp.:					
CI61-609 Northern Natural Gas Co.	South Six Mile	Okla.	Beaver	6 10 65	Iss.
Sunray DX Oil Co.:					
G-14143 Northern Natural Gas Co.	Northeast Glenwood	Okla.	Beaver	4 7 65	Iss.
G-16109 Colorado Interstate Gas Co.	Mocane	Okla.	Beaver	4 7 65	Iss.
G-17899 South Texas Natural Gas Gathering Co.	Jay Simmons	Tex.	Starr	4 15 65	Iss.

See footnotes at end of table, p. 1351.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[2] DOCKET NO., AND PURCHASER[3]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Sunray DX Oil Co.—Continued					
G-18142 Transwestern Pipeline Co.	Undesignated	Okla.	Texas*	4 15 65	Iss.
G-18630 Michigan Wisconsin Pipe Line Co.	Laverne	Okla.	Harper	4 7 65	Iss.
G-19051 Panhandle Eastern Pipe Line Co.	Leslie	Kans.	Meade	4 7 65	Iss.
CI61-1201 Michigan Wisconsin Pipe Line Co.	Edith South	Okla.	Woodward	4 7 65	Iss.
CI63-1154 Panhandle Eastern Pipe Line Co.	Northwest Avard	Okla.	Woods	4 15 65	Iss.
CI65-432 Texas Eastern Transmission Corp.	Dial	Tex.	Goliad	1 5 65	Iss.
CI65-1053 Northern Natural Gas Co.	Morrison Ranch	Tex.	Roberts	6 30 65	Iss.
Sunset International Petroleum Corp., Operator, et al.:					
CI65-932 Northern Natural Gas Co.	N. E. Dower	Okla.	Beaver	5 11 65	Iss.
The Superior Oil Co.:					
CI65-736 Colorado Interstate Gas Co.	Sparks	Kans.	Stanton	3 15 65	Iss.
Carol Daube Sutton, et al.:					
CI65-548 Lone Star Gas Co.	Nellie	Okla.	Stephens	2 8 65	Iss.
Edward Tekieli:					
CI65-501 Pennzoil Co.	Lincoln District	W. Va.	Marion	3 2 65	Iss.
Tenneco Oil Co.:					
CI61-1615 Cimarron Transmission Co.	Marietta	Okla.	Love	6 10 65	Iss.
CI64-1017 Southern Natural Gas Co.	Dexter	Miss.	Walthall*	6 18 65	Iss.
CI64-1065 United Gas Pipe Line Co.	S. Tuleta*	Tex.	Bee	6 18 65	Iss.
CI65-506 El Paso Natural Gas Co.	San Juan Basin	N. Mex.	Rio Arriba	1 19 65	Iss.
CI65-748 Lone Star Gas Co.	Sholem Alechem	Okla.	Carter	3 22 65	Iss.
CI65-939 Tennessee Gas Transmission Co.	Ellis	La.	Acadia	5 11 65	Iss.
Tenneco Oil Co., et al.:					
CI65-1159 El Paso Natural Gas Co.	Undesignated	N. Mex.	San Juan*	6 18 65	Iss.
Tenneco Oil Co., Operator, et al.:					
CI65-547 Tennessee Gas Transmission Co.	South Borosa	Tex.	Starr	3 15 65	Iss.
Texaco Inc.:					
CI61-886 Panhandle Eastern Pipe Line Co.	Nye South	Okla.	Beaver	6 10 65	Iss.
CI62-38 Panhandle Eastern Pipe Line Co.	N. E. Carthage	Okla.	Texas	6 10 65	Iss.
CI65-481 Transcontinental Gas Pipe Line Corp.	Big Foot	Tex.	Frio	1 11 65	Iss.
CI65-676 El Paso Natural Gas Co.	Pegasus Plant	Tex.	Midland	3 2 65	Iss.
CI65-998 Panhandle Eastern Pipe Line Co.	Guymon Southeast	Okla.	Texas	6 2 65	Iss.
Texas American Oil Corp.:					
CI65-872 Northern Natural Gas Co.	Ozona Southwest	Tex.	Crockett	4 22 65	Iss.

See footnotes at end of table, p. 1351.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Texas Crude Oil Co., Operator, et al.:					
CI65-755 El Paso Natural Gas Co.	Undesignated	Tex.	Sutton	3 31 65	Iss.
Texoma Production Co.:					
CI60-704 Michigan Wisconsin Pipe Line Co.	Undesignated	Okla.	Harper*	6 10 65	Iss.
E. B. Thornburg and Cleo E. Thornburg:					
CI60-488 Colorado Interstate Gas Co.	Laverne	Okla.	Harper	6 10 65	Iss.
Tidewater Oil Co.:					
CI65-470 El Paso Natural Gas Co.	Roach Area	Tex.	Reagan	1 11 65	Iss.
CI65-704 American Louisiana Pipe Line Co.	Kings Bayou	La.	Cameron	3 15 65	Iss.
Edward Mike Davis d/b/a Tiger Oil Co., Operator, et al.:					
CI65-826 Kansas-Nebraska Natural Gas Co., Inc.	Stem	Colo.	Washington	5 11 65	Iss.
Glen Tompkins, et al.:					
CI65-712 Southeastern Gas Co.	Henry District	W. Va.	Clay	3 31 65	Iss.
J. C. Trahan, Drilling Contractor, Inc.:					
CI65-417 United Gas Pipe Line Co.	Liberty Hill	La.	Bienville Parish.	1 19 65	Iss.
CI65-494 Texas Eastern Transmission Corp.	Liberty Hill	La.	Bienville Parish.	1 19 65	Iss.
CI65-633 Southern Natural Gas Co.	Eloi Bay	La.	St. Bernard	3 15 65	Iss.
J. C. Trahan, Drilling Contractor, Inc., et al.:					
CI65-860 Texas Gas Transmission Corp.	Terryville	La.	Lincoln	4 15 65	Iss.
Trojan Coal & Petroleum Corp.:					
CI65-645 Hope Natural Gas Co.	Center District	W. Va.	Gilmer	3 2 65	Iss.
CI65-870 Hope Natural Gas Co.	Glenville	W. Va.	Gilmer	4 22 65	Iss.
CI65-951 Consolidated Gas Supply Corp.	Troy District	W. Va.	Gilmer	5 12 65	Iss.
Turnbull & Zoch Drilling Co., Agent:					
CI65-1039 United Gas Pipe Line Co.	Hynes Ranch	Tex.	Refugio	6 2 65	Iss.
Turnbull & Zoch Drilling Co., Operator, et al.:					
CI65-751 Florida Gas Transmission Co.	Buhler	La.	Calcasieu	3 31 65	Iss.
Tuscarora Oil & Gas Corp.:					
CI65-646 Hope Natural Gas Co.	Troy District	W. Va.	Gilmer	3 2 65	Iss.
Union Drilling, Inc.:					
CI65-876 Cumberland and Allegheny Gas Co.	Banks District	W. Va.	Upshur	4 22 65	Iss.

See footnotes at end of table, p. 1351.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[2] DOCKET NO., AND PURCHASER[3]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Union Oil Co. of California:					
CI60-22 Colorado Interstate Gas Co.	Laverne	Okla	Harper	6 10 65	Iss.
CI61-760 Natural Gas Pipeline Co. of America.	McCormick Unit	Okla	Woodward	6 10 65	Iss.
CI61-770 Natural Gas Pipeline Co. of America.	Guthrie Unit	Okla	Woodward	6 10 65	Iss.
CI65-821 Northern Natural Gas Co.	Morrison Ranch	Tex	Roberts	4 13 65	Iss.
Union Producing Co.:					
G-13633 United Gas Pipe Line Co.	Agua Dulce*	Tex	Nueces*	5 21 65	Iss.
G-14370 United Gas Pipe Line Co.	Maxie-Pistol Ridge Area.	Miss	Forrest*	5 21 65	Iss.
G-19209 United Gas Pipe Line Co.	Calhoun	La	Ouachita	5 21 65	Iss.
CI60-622 United Gas Pipe Line Co.	Hollywood	La	Terrebonne	5 21 65	Iss.
CI62-1104 United Gas Pipe Line Co.	South Downsville	La	Union*	5 21 65	Iss.
CI64-1192 United Gas Pipe Line Co.	Straugh-Wilcox*	Tex	Bee	5 21 65	Iss.
CI65-615 United Gas Pipe Line Co.	Monroe	La	Ouachita	2 19 65	Iss.
United Engineering Service, Inc.:					
CI65-793 Trunkline Gas Co.	Heard Ranch	Tex	Bee	5 11 65	Iss.
Valley Gas Transmission, Inc.:					
CI62-124 Texkan Oil Co.	Undesignated	Tex	Brooks*	3 23 65	Iss.
A. M. Van Flick:					
CI65-549 Equitable Gas Co.	Salt Lick	W. Va	Braxton	2 8 65	Iss.
CI65-783 Equitable Gas Co.	Glenville District	W. Va	Gilmer	4 13 65	Iss.
CI65-817 Equitable Gas Co.	Salt Lick District*	W. Va	Braxton	4 13 65	Iss.
Van Grisso Oil Co.:					
G-18450 Michigan Wisconsin Pipe Line Co.	Laverne	Okla	Harper	6 10 65	Iss.
G-19595 Michigan Wisconsin Pipe Line Co.	Laverne	Okla	Harper	6 10 65	Iss.
CI63-59 Michigan Wisconsin Pipe Line Co.	Undesignated	Okla	Harper	6 10 65	Iss.
C. R. Van Hoesen, Agent, et al.:					
CI60-526 Michigan Wisconsin Pipe Line Co.	Laverne	Okla	Harper	6 10 65	Iss.
Daniel W. Varel:					
CI61-139 Natural Gas Pipeline Co. of America.	Undesignated	Tex	Wise	6 10 65	Iss.
The Ventura Oil Co.:					
CI65-552 Lake Shore Pipe Line Co.	Bushnell	Pa	Erie	2 8 65	Iss.
The Vickers Petroleum Co., Inc.:					
CI61-108 Michigan Wisconsin Pipe Line Co.	Laverne	Okla	Beaver	6 10 65	Iss.
The Vickers Petroleum Co., Inc., Operator, et al.:					
CI60-632 Michigan Wisconsin Pipe Line Co.	Laverne	Okla	Harper	6 10 65	Iss.

See footnotes at end of table, p. 1351.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Vincent & Ponsetto Development Co., Inc.:					
CI65-856 United Fuel Gas Co.	Sandlick Precinct*	Ky	Martin	4 15 65	Iss.
Milton S. Vunker, Operator, et al.:					
CI65-475 Texas Gas Transmission Corp.	Sugar Creek	Ky	Hopkins	1 11 65	Iss.
Frank H. Walsh:					
CI65-1152 Kansas-Nebraska Natural Gas Co., Inc.	Elm Grove*	Colo	Logan	6 28 65	Iss.
CI65-1182 Kansas-Nebraska Natural Gas Co., Inc.	Yenter	Colo	Logan	6 28 65	Iss.
Guy I. Warren, Operator:					
CI65-530 United Gas Pipe Line Co.	Circle A	Tex	Bee*	2 8 65	Iss.
Frank B. Waters d/b/a Frank Waters Oil Co., Operator:					
CI64-267 Hydrocarbon Transmission Co.	North A.S.O.G	Tex	Jim Wells	6 2 65	Iss.
The Waverly Oil Works Co.:					
CI65-1155 Equitable Gas Co.	Otter District	W. Va	Braxton	6 18 65	Iss.
Dean Wells, et al.:					
CI65-337 Panhandle Eastern Pipe Line Co.	Undesignated	Kans	Edwards	1 5 65	Iss.
West Vandyfy Trust:					
CI65-869 Hope Natural Gas Co.	Murphy District	W. Va	Ritchie	4 22 65	Iss.
CI65-894 United Fuel Gas Co.	Geary District	W. Va	Roane	4 22 65	Iss.
Western Oil Fields, Inc.:					
CI65-385 Cities Service Gas Co.	Boggs	Kans	Barber	1 5 65	Iss.
Western Petroleum Co., Inc.:					
CI65-608 Arkansas Louisiana Gas Co.	North Enid Area	Okla	Garfield	2 16 65	Iss.
Westmore Drilling Co., Inc., Operator:					
CI65-845 Cities Service Gas Co.	Whelan	Kans	Barber	4 15 65	Iss.
Westmore Drilling Co., Inc., Operator, et al.:					
CI65-918 Cities Service Gas Co.	Atena Mississippi Gas Pool.	Kans	Barber	6 2 65	Iss.
Weva Oil Corp.:					
CI65-689 Hope Natural Gas Co.	Spring Creek District.	W. Va	Wirt	3 2 65	Iss.
White Sands Oil and Gas Corp.:					
CI65-443 El Paso Natural Gas Co.	Dakota Formation	N. Mex	San Juan	4 7 65	Iss.
Wilcox Oil Co.:					
G-18176 Michigan Wisconsin Pipe Line Co.	Laverne	Okla	Harper	6 10 65	Iss.
CI61-521 Colorado Interstate Gas Co.	Laverne	Okla	Harper	6 10 65	Iss.
Bruce L. Wilson, Operator, et al.:					
CI65-476 Arkansas Louisiana Gas Co.	Jefferson	Tex	Marion	1 11 65	Iss.
E. C. Wilson, et al.:					
CI65-890 Hope Natural Gas Gas Co.	Center District	W. Va	Gilmer	4 22 65	Iss.

See footnotes at end of table, p. 1351.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [5]
B. W. Wiseman, Jr., Operator et al.:					
CI65-746 Northern Natural Gas Co.	Southwest Ozona	Tex.	Crockett	3 22 65	Iss.
Worldwide Petroleum Corp.:					
CI65-796 Lake Shore Pipe Line Co.	Bushnell	Pa.	Erie	4 7 65	Iss.
Wyant Ventures, Ltd.:					
G-20327 Colorado Interstate Gas Co.	Undesignated	Okla.	Harper	6 10 65	Iss.
Harold A. Yaffee:					
CI65-554 El Paso Natural Gas Co.	Tapacito-Pictured Cliffs Pool.	N. Mex.	Rio Arriba	2 16 65	Iss.
William B. Yarborough, Operator, et al.:					
CI64-1420 United Gas Pipe Line Co.	West Tecolote	Tex.	Jim Wells	1 11 65	Iss.
Coler Yoakam, Jr., et al.:					
CI65-800 Cities Service Gas Co.	Pulley	Okla.	Logan	4 7 65	Iss.
Zapata Off-Shore Co., Operator, et al.:					
CI65-499 Transcontinental Gas Pipe Line Corp.	Block 72	La.	Ship Shoal Area.	2 8 65	Iss.
H. K. Zink:					
CI64-1156 United Gas Pipe Line Co.	Willman	Tex.	San Patricio	1 11 65	Iss.
Robert L. Zinn, Operator, et al.:					
CI64-1412 United Gas Pipe Line Co.	West Tecolote	Tex.	Jim Wells	1 11 65	Iss.

See footnotes at end of table, p. 1351.

PRODUCER APPLICATIONS FOR ABANDONMENT OF SERVICE DISPOSED OF DURING THE PERIOD JANUARY 1, 1965 THROUGH JUNE 30, 1965

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Amerada Petroleum Corp.:					
CI65-469 Texas Eastern Transmission Corp.	Melrose	Tex.	Goliad	1 19 65	Iss.
Apache Corp., Operator, et al.:					
CI65-774 Cities Service Gas Co.	Salt Plains	Okla.	Alfalfa	3 31 65	Iss.
Arkla Exploration Co.:					
CI65-694 Arkansas Louisiana Gas Co.	East Haynesville	La.	Claiborne	3 2 65	Iss.
The Atlantic Refining Co.:					
CI65-272 Panhandle Eastern Pipe Line Co.	Southeast Liberal	Okla.	Beaver	1 13 65	Wtd.
CI65-928 Transcontinental Gas Pipe Line Corp.	Odem	Tex.	San Patricio	5 11 65	Iss.
Barbara Oil Co.:					
CI65-1191 Cities Service Gas Co.	Rhodes	Kans.	Barber	6 28 65	Iss.
Harry Bass Drilling Co., et al.:					
CI65-479 Texas Eastern Transmission Corp.	Melrose	Tex.	Goliad	2 8 65	Iss.
C. E. Beardmore:					
CI65-533 Hope Natural Gas Co.	Grant District	W. Va.	Ritchie	1 25 65	Iss.
Bissett Oil & Gas Co.:					
CI65-614 Natural Gas of West Virginia, Inc.	Undesignated	W. Va.	Wetzel	2 16 65	Iss.
Ray Blackwell, et al.:					
CI65-528 Hope Natural Gas Co.	Troy District	W. Va.	Gilmer	1 19 65	Iss.
Blanco Oil Co., Operator, et al.:					
CI65-1201 Tennessee Gas Transmission Co.	Seven Sisters	Tex.	Duval	6 30 65	Iss.
Richard H. Brumbaugh, Agent:					
CI65-706 Hope Natural Gas Co.	Washington District	W. Va.	Calhoun	3 15 65	Iss.
Champlin Petroleum Co.:					
CI65-455 Arkansas Louisiana Gas Co.	Gladys Woy Unit	Okla.	Garfield	2 8 65	Iss.
CI65-590 Coastal States Gas Producing Co.	East Mathis Area	Tex.	San Patricio	2 16 65	Iss.
CI65-866 Arkansas Louisiana Gas Co.	Hood Estate Unit No. 1.	Okla.	Stephens	4 22 65	Iss.
Cheyenne Oil Corp. of Delaware, Operator, et al.:					
CI65-865 Texas Gas Transmission Corp.	Grant Coulee Area	La.	Acadia	4 22 65	Iss.
Christie Mitchell & Mitchell Co., et al.:					
CI65-758 Union Texas Petroleum, Div. of Allied Chem. Corp.	Caplen	Tex.	Galveston	3 31 65	Iss.

See footnotes at end of table, p. 1351.

ABANDONMENT APPLICATIONS—Continued

PRODUCER# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Christie Mitchell & Mitchell Co., et al.—Continued					
CI65-761 Texas Gas Transmission Corp.	Weesatche	Tex.	Goliad	3 31 65	Iss.
CI65-765 United Gas Pipe Line Co.	Jennings	La.	Acadia	3 31 65	Iss.
Cities Service Co., Operator, et al.:					
CI65-919 Texas Eastern Transmission Corp.	London	Tex.	Nueces	5 11 65	Iss.
Clark Fuel Producing Co., et al.:					
CI65-514 Florida Gas Transmission Co.	Cortez	Tex.	Starr	4 7 65	Iss.
Columbian Fuel Corp.:					
CI65-729 New York State Natural Gas Corp.	Reed Deemer	Pa.	Jefferson	3 22 65	Iss.
Continental Oil Co.:					
CI65-510 El Paso Natural Gas Co.	Ignacio Ute #2	Colo.	La Plata	1 19 65	Iss.
CI65-511 El Paso Natural Gas Co.	Ignacio Ute #1	Colo.	La Plata	1 19 65	Iss.
CI65-660 Tennessee Gas Transmission Co.	Odem	Tex.	San Patricio	3 2 65	Iss.
CI65-778 United Gas Pipe Line Co.	Elysian	Tex.	Harrison	3 31 65	Iss.
Dale Cottrill d/b/a D. & E. Oil Co.:					
CI65-613 Hope Natural Gas Co.	Clay District	W. Va.	Ritchie	2 16 65	Iss.
D. F. Cox:					
CI65-987 Consolidated Gas Supply Corp.	Murphy District	W. Va.	Ritchie	5 21 65	Iss.
Edwin L. Cox, Operator, et al.:					
CI65-601 United Gas Pipe Line Co.	West Runge	Tex.	Karnes	2 16 65	Iss.
Edmund J. Ford, Jr. and Harry W. Hamilton:					
CI65-1183 Valley Gas Transmission, Inc.	Bell	Tex.	Live Oak	6 28 65	Iss.
R. James Gear:					
CI65-677 Cities Service Gas Co.	Undesignated	Kans.	Harper	3 2 65	Iss.
General American Oil Co. of Texas:					
CI65-431 Ashland Oil & Refining Co.	Undesignated	La.	Union	2 16 65	Iss.
Graridge Corp., Operator, et al.:					
CI65-818 Tennessee Gas Transmission Co.	Alligator Bayou	Tex.	Chambers	4 13 65	Iss.
Greenville Gasoline Co. Inc., Operator:					
CI65-1006 Lone Star Gas Co.	Northeast Greenville Oil.	Okla.	Love	6 2 65	Iss.
Gulf Oil Corp.:					
CI65-772 Trunkline Gas Co.	Hinkle	Tex.	Harris	3 31 65	Iss.
CI65-788 Texas Gas Transmission Corp.	Grand Lake Area	La.	Cameron	3 31 65	Iss.
CI65-935 Jernigan & Morgan Transmission Co.	East Victor Pool	Okla.	Lincoln	5 11 65	Iss.

See footnotes at end of table, p. 1351.

ABANDONMENT APPLICATIONS—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Gulf Oil Corp., Operator, et al.:					
CI65-500 Kansas-Nebraska Natural Gas Co., Inc.	Otis Pool	Colo.	Washington	1 19 65	Iss.
Fredrick C. & Ferris F. Hamilton, et al.:					
CI61-968 El Paso Natural Gas Co.	Clear Lake	Okla.	Beaver	4 13 65	Iss.
Jake L. Hamon:					
CI65-478 Northern Natural Gas Co.	S.E. Floris	Okla.	Beaver	1 11 65	Iss.
CI65-591 Tennessee Gas Transmission Co.	Flores	Tex.	Starr	2 16 65	Iss.
W. H. Hudson, Operator, et al.:					
CI65-648 Tennessee Gas Transmission Co.	N.E. Lopeno	Tex.	Zapata	4 22 65	Iss.
Humble Oil & Refining Co.:					
CI65-705 Lone Star Gas Co.	Robberson Heirs Lease.	Okla.	Jefferson	3 15 65	Iss.
CI65-969 Arkansas Louisiana Gas Co.	Northwest Beaver Pool.	Okla.	Stephens	5 12 65	Iss.
Humble Oil & Refining Co., Operator, et al.:					
CI65-882 American Louisiana Pipe Line Co.	East	La.	Cameron	4 22 65	Iss.
Hassie Hunt Trust:					
CI65-863 United Gas Pipe Line Co.	Bryceland Area	La.	Bienville	4 22 65	Iss.
William C. Hurtt, et al.:					
CI65-787 Hope Natural Gas Co.	Hamilton District	W. Va.	Nicholas	3 31 65	Iss.
Inland States Gas Co.:					
CI65-937 Cushing Gas Transmission Co.	South Cushing	Okla.	Lincoln	5 11 65	Iss.
Norman V. Kinsey, et al.:					
CI65-732 United Gas Pipe Line Co.	Bryceland Area	La.	Bienville	3 22 65	Iss.
Lab Oil Co., Operator, et al.:					
CI65-1151 Coastal States Gas Producing Co.	A&H	Tex.	Duval	6 18 65	Iss.
Logue & Patterson, Operator, et al.:					
CI65-814 Tennessee Gas Transmission Co.	West Taft	Tex.	San Patricio	4 13 65	Iss.
W. C. McBride, Inc., et al.:					
CI65-728 Kansas-Nebraska Natural Gas Co., Inc.	Padroni	Colo.	Logan	3 22 65	Iss.
Marathon Oil Co., Operator, et al.:					
CI65-686 United Gas Pipe Line Co.	Cotton Valley	La.	Webster	3 2 65	Iss.
Stanley Martin, Agent:					
CI65-619 Hope Natural Gas Co.	Dekalb District	W. Va.	Gilmer	2 19 65	Iss.
Mid-Atlantic Oil & Gas Co.:					
CI65-202 Hope Natural Gas Co.	Grant District	W. Va.	Ritchie	1 5 65	Iss.

See footnotes at end of table, p. 1351.

ABANDONMENT APPLICATIONS—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
George Mitchell & Assoc. Inc., Agent:					
CI65-764 United Gas Pipe Line Co.	South Slocum	Tex.	Anderson	3 31 65	Iss.
Monsanto Co., Operator, et al.:					
CI65-1049 Southern Natural Gas Co.	Merit	Miss.	Simpson	6 14 65	Iss.
W. H. Mossor:					
CI65-477 Hope Natural Gas Co.	Freemans Creek District	W. Va.	Lewis	1 11 65	Iss.
W. H. Mossor, et al.:					
CI65-493 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	1 19 65	Iss.
Mull Drilling Co., Inc., Operator, et al.:					
CI65-484 Cities Service Gas Co.	Undesignated	Kans.	Barber	1 19 65	Iss.
P.&S. Oil and Gas Corp.:					
CI65-902 Consolidated Gas Supply Corp.	Elk District*	W. Va.	Kanawha*	5 11 65	Iss.
Hal Pack & Co.:					
CI65-687 Hope Natural Gas Co.	Elk District	W. Va.	Kanawha	3 2 65	Iss.
Pan American Petroleum Corp.:					
CI65-914 Tennessee Gas Transmission Co.	Larosa	Tex.	Refugio	5 11 65	Iss.
Carroll T. Payne, et al.:					
CI65-447 Hope Natural Gas Co.	Grant District	W. Va.	Harrison	1 5 65	Iss.
B. M. Tyree Pickens:					
CI65-695 The Ohio Fuel Gas Co.	Sutton	Ohio	Meigs	3 15 65	Iss.
CI65-696 The Ohio Fuel Gas Co.	Sutton	Ohio	Meigs	3 15 65	Iss.
CI65-697 The Ohio Fuel Gas Co.	Sutton	Ohio	Meigs	3 15 65	Iss.
CI65-698 The Ohio Fuel Gas Co.	Sutton	Ohio	Meigs	3 15 65	Iss.
Reserve Oil & Gas Co., Operator:					
CI65-675 United Gas Pipe Line Co.	East Cabeza Creek	Tex.	Goliad	3 2 65	Iss.
Joseph E. Seagram & Sons, Inc.:					
CI65-794 Southern Natural Gas Co.	Dexter	Miss.	Marion	4 7 65	Iss.
Shell Oil Co.:					
CI65-707 Kansas-Nebraska Natural Gas Co. Inc.	Big Sandy	Colo.	Logan	3 22 65	Iss.
CI65-934 Tennessee Gas Transmission Co.	Rich Ranch	Tex.	Liberty	6 28 65	Iss.
CI65-1147 The Manufacturers Light and Heat Co.	Caledonia-Pike Area.	Pa.	Elk*	6 18 65	Iss.

See footnotes at end of table, p. 1351.

ABANDONMENT APPLICATIONS—Continued

PRODUCER,‡ DOCKET NO., AND PURCHASER‡	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
R. H. Siegfried, Inc., Operator, et al.:					
CI65-831 Cities Service Gas Co.	Keystone Reservoir	Okla	Creek	4 15 65	Iss.
Sinclair Oil & Gas Co., Operator, et al.:					
CI65-1177 United Gas Pipe Line Co.	Lisbon	La	Claiborne	6 28 65	Iss.
Skelly Oil Co.:					
CI65-985 Arkansas Louisiana Gas Co.	Simsboro	La	Lincoln	5 21 65	Iss.
CI65-986 Kansas-Nebraska Natural Gas Co., Inc.	Guymon-Hugoton	Okla	Texas	5 21 65	Iss.
CI65-1007 Champlin Petroleum Co.	East Gutarie	Okla	Logan	6 2 65	Iss.
Slade, Inc., Operator, et al.:					
CI65-1202 United Gas Pipe Line Co.	Cabeza Creek Area.	Tex	Goliad	6 30 65	Iss.
Smith Development Co., Operator, et al.:					
CI65-720 Northern Natural Gas Co.	Smith Perryton	Tex	Ochiltree	3 22 65	Iss.
Socony Mobil Oil Co., Inc.:					
CI65-422 Natural Gas Pipeline Co. of America.	Alvord	Tex	Wise	1 5 65	Iss.
CI65-1012 Colorado Interstate Gas Co.	Adams Ranch	Kans	Meade	5 13 65	Rej.
Socony Mobil Oil Co., Inc. Operator, et al.:					
CI65-921 Lone Star Gas Co	Doyle	Okla	Stephens	5 11 65	Iss.
Sohio Petroleum Co.:					
CI65-784 Coastal States Gas Producing Co.	Tiger	Tex	Duval	3 31 65	Iss.
CI65-785 Coastal States Gas Producing Co.	Tiger	Tex	Duval	3 31 65	Iss.
Southern Union Production Co.:					
CI65-834 El Paso Natural Gas Co.	Noelke	Tex	Crockett	4 13 65	Iss.
Austin E. Stewart:					
CI65-1200 United Fuel Gas Co.	Lamar	La	Franklin	6 30 65	Iss.
Sunray DX Oil Co.:					
CI65-786 Texas Eastern Transmission Corp.	Mineral	Tex	Bee	3 31 65	Iss.
CI65-789 Texas Eastern Transmission Corp.	S.E. Charco	Tex	Goliad	3 31 65	Iss.
CI65-798 Trunkline Gas Co	Cypress Creek	Tex	Newton	4 7 65	Iss.
CI65-819 Cities Service Gas Co.	Dower	Kans	Barber	4 15 65	Iss.
CI65-843 Texas Eastern Transmission Corp.	Southeast Charco	Tex	Goliad	4 15 65	Iss.
CI65-852 Texas Eastern Transmission Corp.	Hordes Creek	Tex	Goliad	4 15 65	Iss.
CI65-993 United Gas Pipe Line Co.	East Cabeza Creek.	Tex	Goliad	5 21 65	Iss.

See footnotes at end of table, p. 1351.

ABANDONMENT APPLICATIONS—Continued

PRODUCER,# DOCKET NO., AND PURCHASERS#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Sunray DX Oil Co.—Continued					
CI65-1051 Arkansas Louisiana Gas Co.	Jefferson	Tex.	Marion	6 14 65	Iss.
Sunray DX Oil Co., Operator, et al.:					
CI65-861 Texas Eastern Transmission Corp.	Hordes Creek	Tex.	Goliad	4 22 65	Iss.
CI65-877 Texas Eastern Transmission Corp.	North Goebel	Tex.	Live Oak	4 22 65	Iss.
The Superior Oil Co.:					
CI65-1148 Florida Gas Transmission Co.	Oblate	Tex.	Hidalgo	6 18 65	Iss.
Tenneco Oil Co.:					
CI65-929 American Louisiana Pipe Line Co.	East Cheniere Perdue.	Tex.	Cameron	5 11 65	Iss.
CI65-976 Natural Gas Pipeline Co. of America.	North Knolls	Tex.	Nueces	5 21 65	Iss.
Texaco Inc.:					
CI65-487 Tennessee Gas Transmission Co.	Odem	Tex.	San Patricio	1 19 65	Iss.
Texas Gulf Sulphur Co.:					
CI65-961 Tennessee Gas Transmission Co.	Spanish Camp	Tex.	Wharton	5 12 65	Iss.
Tidewater Oil Co.:					
CI65-994 Arkansas Louisiana Gas Co.	East Kremlin	Okla.	Garfield	5 21 65	Iss.
CI65-1003 Tennessee Gas Transmission Co.	West Rock Island	Tex.	Colorado	6 2 65	Iss.
Tres Oil Co., et al.:					
CI65-1197 El Paso Natural Gas Co.	Eumont	N. Mex.	Lea	6 30 65	Iss.
Triangle Oil Co.:					
CI65-813 Hope Natural Gas Co.	Freemans Creek District.	W. Va.	Lewis	4 13 65	Iss.
True Oil Co., et al.:					
CI65-1042 Kansas-Nebraska Natural Gas Co., Inc.	Minto	Colo.	Logan	6 18 65	Iss.
United Co., Agent:					
CI65-635 Valley Gas Transmission, Inc.	North Magnolia City.	Tex.	Jim Wells	3 2 65	Iss.
CI65-636 Trunkline Gas Co.	West Premont	Tex.	Jim Wells	3 2 65	Iss.
CI65-637 Tennessee Gas Transmission Co.	Tom Graham West.	Tex.	Jim Wells	3 2 65	Iss.
Wimar Productions:					
CI65-647 Equitable Gas Co.	West Union	W. Va.	Doddridge	3 2 65	Iss.
Oley Yeager:					
CI65-1167 Pennzoil Co.	Sheridan District	W. Va.	Lincoln	6 18 65	Iss.

---

*Indicates that other fields, counties, or States are also included.

#Producers' and Purchasers' names may include et al., trustee, agent, or additional names on certain dockets.

[1] Iss., issued; Wtd., withdrawn; Rej., rejected.